



MEMORANDUM

To: PLANNING COMMISSION
From: COMMUNITY DEVELOPMENT DEPARTMENT
Subject: ZA 06-12: CITY OF MORGAN HILL-ZONING TEXT AMENDMENTS

Date: October 10, 2006

REQUEST

A request to amend Sections 18.56 Exceptions and Modifications, 18.04 Zoning Definitions, 18.48 Commercial & Industrial Performance Standards and the creation of a new Section titled 18.57 Exceptions.

RECOMMENDATION

Environmental Assessment: Exempt pursuant to CEQA Section 15378

Application, ZA 06-12: Recommend City Council approval subject to the findings contained within the resolutions amending: Section 18.04 Definitions, Section 18.48 Performance Standards and Section 18.56 Accessory structures.

Recommend City Council approval subject to the findings contained within the resolution creating Section 18.57 Exceptions

BACKGROUND

As part of an on-going effort to update the zoning text, City staff has identified Section 18.56 Exceptions and Modifications as in need of an update due to its lack of clarity and lack of specific standards. Section 18.56 is also the most used section of the zoning chapter since it covers common home improvements such as swimming pools, fence height and decks.

Section 18.56 also covers many different topics ranging from home occupation regulations to deck setbacks. One of staff's goals for improvement to Section 18.56 is to remove unrelated zoning topics and create a zoning section specific to accessory structures and typical yard area improvements.

CASE ANALYSIS

The current request includes: 1) Renaming and clarifying Section 18.56 to only contain development standards for accessory structures, patios, fences & decks. 2) Moving non-accessory structure standards pertaining to exceptions into a new section titled 18.57 Exceptions. 3) Move performance oriented standards currently within 18.56 into Chapter 18.48 Commercial and Industrial Performance Standards. 4) Rename Chapter 18.48 "Performance Standards"; and 5) Add new zoning definitions within 18.04 Zoning Definitions, to further clarify existing and proposed text within revised zoning Section 18.56 Accessory Structures.

Accessory Structures: Due to the extensive changes proposed to Section 18.56 the existing text is recommended to be completely replaced with text specific to accessory structures and back yard improvements. A copy of Section 18.56 Exceptions and Modifications, is attached for the Commission's reference. A copy of the new text for Section 18.56 is attached as Exhibit A of the resolution recommending approval of an amendment to Chapter 18.56. The more significant changes and additions proposed within the new text are as follows:

- Structures less than 7 ft. tall and less than 120 sq. ft. in size are no longer covered within the zoning text.
- Accessory structures cannot be used as living space. Structures that contain living space, must meet the requirements of Chapter 18.55 Secondary Dwelling Units.
- Balcony and deck standards are now similar and establish side, rear and height limitations for such structures.
- Standards for front yard structures have also been assembled to address encroachment into front yard areas.
- Height and setback limitations for swimming pool accessories and ponds have been established.
- Standards for other outdoor structures such as fire places and fountains have been developed.
- Fence standards are proposed to apply to Commercial and Industrial zoning districts and exclusion of certain fence types in various land use areas is proposed.

Exceptions: Section 18.57 Exceptions is proposed as a new zoning section containing all exception provisions. The majority of the content previously resided in the Section 18.56. The new zoning section titled "Exceptions" is attached as Exhibit A of the Resolution recommending City Council approval of a new zoning text Section 18.57. Changes are proposed to text within Section 18.57.020 Exceptions to Height. The purpose of the proposed changes is to make the text and standards read clearer and insert height and setback requirements for flag poles. New text or significantly altered text is shown in highlight. Other text alterations are shown in ~~strike-out~~ for deleted text and ***bold italic*** for added text.

Performance Standards: A lot of the existing text within the Exception and Modifications section contains standards for actions or uses and do not define physical development standards. These standards appear to be performance oriented standards that are applicable to both residential and non residential zoning districts. After reviewing the current text of 18.48 Commercial and Industrial Performance Standards, staff believes that all of the existing standards within this section could equally apply to all zoning districts unless specified otherwise within the text. Staff is recommending that Chapter 18.48 be renamed "Performance Standards" and the existing performance standards contained within Section 18.56 be moved to reside within the renamed Section 18.48 Performance Standards.

In addition to moving performance standards from Section 18.56 to 18.48, the following changes and additions to the text are proposed:

- Elimination of 18.47.112 Special residential care facilities has been deleted since it is in conflict with state law.
- Section 18.47.118 Storage on vacant lots has been combined with Section 18.48.110 Storage on lots.
- The entire chapter has also been arranged alphabetically and thus renumbered.

A copy of the proposed Performance Standards section is attached as Exhibit A of the Resolution recommending City Council approval of the proposed new Section 18.48. The text moved from section 18.56 is shown in highlighted text and the entire section is renumbered due to the rearranging of the sections into alphabetical order. Other text alterations are shown in ~~strike-out~~ for deleted text and ***bold italic*** for added text.

Zoning Definitions: In order to provide a clear understanding of the existing and proposed zoning text new zoning definitions are proposed to be inserted within Section 18.04 Zoning Definition. New definitions proposed as a result of the update of Section 18.56 include: Ancillary Use, Balcony, Clear Triangle, Deck, Patio, Pool House and Porch. Proposed additions to Section 18.04 Zoning Definitions are shown in highlighted text within Exhibit A as attached to Zoning Definition approval resolution.

In addition to the zoning definitions added as a result of the update of Section 18.56, Exhibit A of the Zoning Definition amendment Resolution also contains the new zoning definitions proposed as a result of the update to the downtown CC-R zoning. The CC-R zoning changes and resulting new definitions are discussed as part of separate agenda item. To avoid having two resolutions within the same agenda amending the Zoning Definition section of the code, the attached Zoning Definitions Resolution includes definitions proposed as part of ZAA 05-11. The zoning definitions proposed as part of ZAA 05-11 include: Antique Shop, Arts and Crafts Gallery, Business Support Service, Commercial Services, Office, Administrative and School, Business. These new definitions are also shown in highlighted text within Exhibit A of the Resolution recommending amendment to Section 18.04.

RECOMMENDATION

In order to further clarify the Exceptions and Modifications section 18.56 of the Municipal Code, it is recommended that the existing chapter be split and renamed 18.56 Accessory Structures and 18.57 Exceptions. Other text within the Exceptions and Modifications section seemed more suited as performance standards which resulted in the recommendation to amend the Commercial and Industrial Performance Standards to apply to all zoning designations not just commercial and industrial. Lastly, additional zoning definitions are recommended to be added to section 18.04 Zoning Definitions to provide additional clarification to the zoning text.

Attachments:

Chapter 18.56

Resolution recommending amendment to Chapter 18.04 Definitions

Resolution recommending amendment to Chapter 18.48 Performance Std.

Resolution recommending amendment to Chapter 18.56 Accessory structures

Resolution recommending adoption of Chapter 18.57 Exceptions

RESOLUTION NO. 06

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
AMENDMENT TO CHAPTER 18.04 DEFINITIONS OF THE
MORGAN HILL MUNICIPAL CODE. (ZA-06-12: CITY OF
MORGAN HILL – EXCEPTIONS AND MODIFICATIONS
& ZAA 05-11: CITY OF MORGAN HILL – DOWNTOWN
ZONING AMENDMENTS ZONING TEXT AMENDMENTS)**

WHEREAS, such request was considered by the Planning Commission at their regular meeting of October 10, 2006, at which time the Planning Commission recommended approval of application ZA-06-12: City of Morgan Hill – Exceptions and Modifications Zoning Text Amendments and ZAA 05-11 City of Morgan Hill-Downtown zoning amendments; and

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The proposed zoning text amendment are consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zoning definition text change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. The Planning Commission hereby recommends approval of changes to the text of the Morgan Hill Municipal Code amending Chapter 18.04 Definitions which are shown by strike-out text for deletions, and bold italic text for additions. All text amendments are recommended to be made as shown in attached Exhibit A.

**PASSED AND ADOPTED THIS 10th DAY OF OCTOBER, 2006, AT A REGULAR
MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:**

ATTEST:

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J. BENICH, Chair

Chapter 18.04

DEFINITIONS

Sections:

18.04.005	Definitions and interpretation of language.
18.04.010	Abutting.
18.04.015	<i>Accessory use or structure.</i>
18.04.018.1	Adult arcades.
18.04.018.2	Adult business.
18.04.018.3	Adult bookstores.
18.04.018.4	Adult cabaret.
18.04.018.5	Adult entertainment enterprise.
18.04.018.6	Adult hotel/adult motel.
18.04.018.7	Adult novelty store.
18.04.018.8	Adult theater.
18.04.018.9	Adult video store.
18.04.020	Agent of owner.
18.04.025	Agriculture.
18.04.030	Alley or lane.
18.04.035	Alter.
18.04.036	Amusement/Entertainment Arcade.
18.04.036.5	Ancillary use
18.04.037	Antique Shop, vintage clothing & collectables.
18.04.040	Apartment vacancy rate.
18.04.043	Arts and crafts gallery.
18.04.045	Automobile service station or gasoline service station.
18.04.050	Automobile wrecking.
18.04.053	Balcony
18.04.055	Basement.
18.04.057	Boardinghouse or roominghouse.
18.04.060	Building.
18.04.063	Building Coverage
18.04.064	Building Envelope
18.04.065	Building, height of.
18.04.070	Building, main.
18.04.070.01	Business support service.
18.04.071	Caretakers unit.
18.04.075	Cessation of use.
18.04.077	City Geologist.
18.04.077.5	Clear triangle
18.04.080	Combining district.
18.04.085	Commercial.
18.04.090	Commercial recreation.
18.04.093	Commercial Services.
18.04.095	Community apartment.
18.04.100	Conditional use.

18.04.105	Condominium.
18.04.110	Condominium development.
18.04.115	Construction yard.
18.04.117	Convenience Market/Store.
18.04.120	Corporation yard; service yard.
18.04.120.10	Deck
18.04.121	Delivery or service vehicle.
18.04.123	Display area, outdoor.
18.04.125	District.
18.04.130	Domestic pet.
18.04.132	Drive-in or drive-through establishment.
18.04.135	Driveway.
18.04.140	Driveway aisle, major.
18.04.143	Driveway apron.
18.04.145	Dwelling.
18.04.150	Dwelling, multifamily.
18.04.154	Dwelling, single-family, attached.
18.04.155	Dwelling, single-family, detached.
18.04.156	Dwelling, single-family, modified setback.
18.04.157	Dwelling, two-family or duplex.
18.04.160	Dwelling unit.
18.04.162	Dwelling unit, primary.
18.04.164	Dwelling unit, secondary.
18.04.164.5	Escort agencies.
18.04.165	Family.
18.04.165.5	Farmers market.
18.04.170	Fence.
18.04.175	Fence height.
18.04.177	Financial service.
18.04.180	Floodplain.
18.04.185	Floodwaters.
18.04.190	Floodway.
18.04.195	Floor area.
18.04.200	Freeway.
18.04.205	Garage, private.
18.04.210	Garage, public.
18.04.215	General plan.
18.04.217	Guest house.
18.04.218	Hazardous materials reprocessing.
18.04.219	Hazardous waste.
18.04.220	Home improvement center.
18.04.225	Home occupation.
18.04.230	Industrial park/business park.
18.04.232	Interim Basis.
18.04.235	Kennel.
18.04.237	Kitchen.
18.04.240	Landscaping.
18.04.235	Lodging Facilities.

18.04.245	Lot.
18.04.250	Lot area.
18.04.255	Lot, corner.
18.04.260	Lot coverage or building coverage.
18.04.265	Lot, depth of.
18.04.270	Lot, interior.
18.04.272	Lot, Z
18.04.275	Lot line, front.
18.04.280	Lot line, rear.
18.04.285	Lot, through.
18.04.290	Lot width.
18.04.291	Major motor vehicle repair.
18.04.292	Manufactured housing.
18.04.292.5	Massage parlor.
18.04.293	Mini-storage facilities.
18.04.294	Medical office.
18.04.295	Minor motor vehicle repair.
18.04.296	Mobile home.
18.04.300	Motel, motor hotel.
18.04.305	Natural land slope.
18.04.310	Nonconforming building.
18.04.315	Nonconforming lot.
18.04.320	Nonconforming use.
18.04.321	Non-Profit Organization.
18.04.322	Nudity or semi-nudity.
18.04.325	Nursery.
18.04.330	Nursery school, children's nursery school, child day care service, family day care home.
18.04.335	Nursing home or convalescent hospital.
18.04.336	Office, administrative.
18.04.337	Off-site Improvements.
18.04.338	On-site Improvements.
18.04.340	Open space, essentially unimproved.
18.04.345	Overlay district.
18.04.346	Owner.
18.04.350	Parking space.
18.04.352	Patio.
18.04.355	Performance standards.
18.04.357	Personal service.
18.04.358	Police permit.
18.04.358.5	Pool house.
18.04.358.8	Porch.
18.04.360	Principal permitted use.
18.04.364	Public facility.
18.04.365	Public use.
18.04.370	Quasi-public use.
18.04.373	Research and development.

- 18.04.381 Recreational vehicle long-term space.
- 18.04.382 Recreational vehicle park.
- 18.04.382.5 Recreational vehicle short term space.
- 18.04.382.7 Recreational vehicle transitional space.
- 18.04.382.8 Restaurant, fast food.
- 18.04.382.8 Restaurant, sit-down.
- 18.04.383 Retail, extensive.
- 18.04.384 Retail, intensive.
- 18.04.385 Sales, wholesale.
- 18.04.390 Salvage yard
- 18.04.391 School, business, trade, or tutoring.**
- 18.04.393 Senior citizen housing.
- 18.04.394 Sensitive areas or sensitive sites.
- 18.04.395 Setback.
- 18.04.396 Setback Line.
- 18.04.399 Site, Building.
- 18.04.400 Special residential care facilities.
- 18.04.401 Specified anatomical areas.
- 18.04.402 Specified criminal acts.
- 18.04.403 Specified sexual activities.
- 18.04.405 Stable.
- 18.04.410 Standard industrial classification manual (SIC).
- 18.04.415 Story.
- 18.04.420 Street frontage.
- 18.04.425 Structure.
- 18.04.427 Theater.
- 18.04.430 Tract office, temporary.
- 18.04.435 Townhouse.
- 18.04.437 Transportation terminal.
- 18.04.439 Travel trailer and recreational vehicle.
- 18.04.440 Use, allowed.
- 18.04.445 Use, permitted.
- 18.04.447 Vehicle space.
- 18.04.448 Warehousing and distribution.
- 18.04.450 Yard, front.
- 18.04.455 Yard, front, least depth.
- 18.04.460 Yard, rear.
- 18.04.465 Yard, rear, least depth.
- 18.04.470 Yard, side.
- 18.04.475 Yard, side, least width. (Ord. 1487 N.S., 2000; Ord. 1473 N.S. §§ 4, 5 & 6, 2000; Ord. N.S. §§ 4 & 35, 1998; Ord. 1233 N.S. §§ 6 & 7, 1995; Ord. 1215 N.S. § 13, 1995; Ord. 1176 § 7, 1994; Ord. 1135 §§ 5 & 6, 1993, Ord. 1059 N.S. § 1, 1991)

18.04.005 Definitions and interpretation of language.

For the purpose of Division I of this title, the words and phrases set forth in this chapter shall have the meanings respectively ascribed to them herein, and the word "used" shall include arranged, designed, constructed, altered, converted, rented, leased or intended to be used. (Ord. 559 N.S. § A (part), 1981)

18.04.010 Abutting.

"Abutting" means land having a common property line or district line, or separated only by a private street, alley or easement. (Ord. 559 N.S. § A (part), 1981)

18.04.015 Accessory use or structure.

~~"Accessory use or structure" means a use or structure subordinate to or part of the principal use on the same lot, and serving a purpose customarily incidental to the principal use. Guest houses, caretakers or granny units are not considered accessory uses or structures. (Ord. 1055 N.S. § C (part), 1991; Ord 1046 N.S. § 3 (part), 1991; Ord. 559 N.S. § A (part), 1981)~~

"Accessory structure" means a structure subordinate to the principal structure on the same lot. Accessory structures cannot be used as living space as defined by the Building Code.

18.04.018.1 Adult arcades.

"Adult arcades" means any place to which the public is permitted or invited, wherein coin-operated, currency operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, television sets, monitors, receivers, transmitters, video cassette players or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas." (Ord. 1150 N.S. § 2 (part), 1993)

18.04.018.2 Adult business.

"Adult Business" means a business which includes any of the following: sells or rents items related to "specified anatomical areas" or "specified sexual activities" for over twenty percent of the year, and which items represent over twenty percent of the inventory or stock in trade or titles offered or floor space and/or over twenty percent of the net receipts of the business whichever is greater; depicts or projects still or moving photographs related to "specified anatomical areas" or "specified sexual activities" for over twenty percent of the year, which depiction or projection represents over twenty percent of the net receipts of the business; or provides live entertainment, massage or other service to patrons, regardless of percentage of net receipts or other measurement of share of the overall business, which is related to "specified anatomical areas" or "specified sexual activities".

1. Partial listing of types of adult businesses.

"Adult businesses" include but are not limited to: adult bookstores, adult video stores, adult novelty stores, adult arcades, adult motels, adult theaters, adult entertainment enterprises, adult cabarets, escort agencies, massage parlors, nude modeling studios; or places which engage in or allow couch dancing, topless dancing, nude or semi-nude mud wrestling or similar businesses.

2. Exceptions.

The following types of businesses which are regulated by state or professional agencies or which have only incidental services or products which could be associated with "adult businesses" are exempt from the provisions of this ordinance:

a. Therapeutic or holistic massage. Massage which is conducted by doctors, nurses, osteopaths or chiropractors, teachers, barbers, beauticians or by massage technicians which have received at least one hundred hours of instruction and supervised training at recognized massage schools or who have been licensed in massage by the state, is exempt.

B. Medical or psychological therapies. The medical or psychological therapeutic activities of state-licensed doctors, psychologists, psychiatrists or marital or sexual therapists are exempt.

C. Modeling or theatrical performances. Nude modeling done at infrequent intervals in connection with a college or art school, accredited by a nationally recognized accreditation organization, for students who have enrolled on a semester or quarterly basis with tuition is exempt. Occasional theatrical performances, either live or in motion picture theaters, in which "nudity" is incidental to the content of the presentation, are exempt.

D. Incidental sale or rental of merchandise. Businesses which incidentally sell or rent adult merchandise, involving less than twenty percent of the floor space of the establishment or less than twenty percent of the net receipts, whichever is greater, are exempt, providing that all other laws on obscenity and indecent behavior are complied with.

E. Private non-commercial behavior. This section does not regulate the private behavior of adults, which is otherwise permitted by law, where there is no payment, gratuity, exchange of labor or goods, or other consideration of a transaction. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.018.3 Adult bookstores.

"Adult bookstores" means any premises in which twenty percent or more of the titles offered or to which twenty percent or more of the actual display area of the store is devoted books, magazines, periodicals or merchandise which depict or describe specified sexual activity. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.018.4 Adult cabaret.

"Adult cabaret" means a nightclub, bar, restaurant or similar commercial establishment which regularly features: (a) persons who appear in a state of nudity; (b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or (c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by a depiction or description of "specified sexual activities" or "specified anatomical areas." (Ord. 1150 N.S. § 2 (part), 1993)

18.04.018.5 Adult entertainment enterprise.

"Adult entertainment enterprise" means any business activity wherein is furnished for a fee or charge or other like consideration the opportunity to paint, feel, handle, touch, to be in the presence of, be entertained by the unclothed body, or the unclothed portion of the body of another person, or to be so painted, felt, handled, touched or observed by another person, or to observe, view or photographs any such activity, and shall include but not be limited to nude encounter studios, adult or nude dance studios, adult or nude exhibitions, peep shows, nude wrestling centers and adult or nude art or photograph studios. "Unclothed portion of the body" means a state of dress so as to expose the female breast below a point immediately above the top of the areola, male or female genitals, pubic areas, buttocks or female breast with only the nipple and areola covered. The medical or psychological therapeutic activities of state-licensed doctors, psychologists, psychiatrists or marital or sexual therapists are exempt. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.018.6 Adult hotel/adult motel.

"Adult hotel/adult motel" means a hotel or motel or similar commercial establishment which: (1) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, computer software, slides or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television; (2) offers a sleeping room for rent for a period of time less than ten hours; or (3) allows a tenant or occupant to sub-rent the sleeping rooms for a time period of less than ten hours. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.018.7 Adult novelty store.

"Adult novelty store" means an establishment with over twenty-percent of: (a) its floor area devoted to; (b) stock-in-trade consisting of; or (c) gross revenues derived from, goods which are replicas of, or which simulate, "specified anatomical areas" or "specified sexual activities," or goods which are designed to be placed on or in "specified anatomical areas," or to be used in conjunction with "specified sexual activities." (Ord. 1150 N.S. § 2 (part), 1993)

18.04.018.8 Adult theater.

"Adult theater" means a commercial establishment in which for any form of consideration, films, motion pictures, video cassettes, video tapes, laser discs, slides or similar photographic or electronic reproductions are regularly shown and which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas," or to which minors are not admitted, or with respect to which advertising for said pictures is contained in the adult theaters sections of local newspapers, or in which on a regular basis sexual intercourse, oral copulation, masturbation, homosexual acts or other specified sexual activities are actually shown or simulated. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.018.9 Adult video store.

"Adult video store" means a commercial enterprise which offers for sale or rental for any form of consideration, for over twenty-percent of titles offered or over twenty-percent of actual display area of the store, whichever is more, any one or more of the following: photographs, films, motion pictures, laser discs, video cassettes, video tapes or video reproductions, slides or other visual representations which primarily depict or describe "specified sexual activities" or "specified anatomical areas." (Ord. 1150 N.S. § 2 (part), 1993)

18.04.020 Agent of owner.

"Agent of owner" means any person who can show written proof that he is acting for the property owner. (Ord. 559 N.S. § A (part), 1981)

18.04.025 Agriculture.

"Agriculture" means the use of the land for agricultural purposes, including farming, dairying, pasturage, agriculture, apiaries, horticulture, floriculture, viticulture, and animal and poultry husbandry, and the necessary accessory uses for packing, processing, treating or storing the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities; and provided, further, that the above uses shall not include the commercial feeding of garbage or offal to swine or other animals. (Ord. 559 N.S. § A (part), 1981)

18.04.030 Alley or lane.

"Alley" or "lane" means a public or private way not more than thirty feet wide, affording only secondary means of access to abutting property. (Ord. 559 N.S. § A (part), 1981)

18.04.035 Alter.

"Alter" means to change any of the supporting members of buildings, such as bearing walls, columns, beams or girders. (Ord. 559 N.S. § A (part), 1981)

18.04.036 Amusement/Entertainment Arcade.

"Amusement/Entertainment Arcade." is a commercial establishment involving mechanical or electronic games operated on a private or for-profit basis. Mechanical or electrical games include any machine, apparatus, contrivance, appliance or device which may be operated or played upon by placing or depositing therein of any coin, check, slug, ball, or any other article or device, or by involving in its use either skill or chance, including, but not limited to tape machine, pinball machine, bowling game machine, shuffleboard machine, electronic video game, or any other similar machines or similar services. Commercial establishments with 10 or fewer mechanical or electrical games and which are incidental to the primary use are not consider arcades. (Ord. 1215 N.S. § 4, 1995)

18.04.036.5 Ancillary use

"Ancillary use" means a use subordinate to the principal use on the same lot and serving a purpose customarily incidental to the principal use.

18.04.037 Antique shop, vintage clothing & collectables

A place principally offering antiques for sale. An antique for the purposes of the Chapter, shall be a work of art, piece of furniture, clothing, decorative object, or the like, of or belonging to the past, at least 30 years old. Antique shop does not include "second hand store."

18.04.040 Apartment vacancy rate.

"Apartment vacancy rate" means the number of vacant apartments in the city at a given time, shown as a percentage of the total number of apartments in the city. Vacant apartments include those units which are:

- A. Currently vacant and available for rent or lease;
- B. Vacant but temporarily not available for rent or lease due to painting, cleaning or repairs; and
- C. Currently occupied but will become available for rent or lease within one week. (Ord. 559 N.S. § A (part), 1981)

18.04.043 Arts and crafts gallery.

"Arts and crafts gallery" is an establishment (1) engaged in the sale, loan, or display of art books, paintings, sculptures, or other works of art, and/or (2) that produces on the premises articles for sale of artistic quality or effect or handmade workmanship (no mass produced items). Examples include candle making, glass blowing, pottery making, custom jewelry, weaving, woodworking and other associated activities

18.04.045 Automobile service station or gasoline service station.

A. "Automobile service station" or "gasoline service station" means a retail place of business engaged exclusively in dispensing of automotive fuel and motor oil; and may as a secondary or ancillary use engage in supplying goods and services essential to the normal operation of automobiles, such as: vehicle washing and lubricating services; the sale and servicing of tires, batteries, replacement items and other automotive accessories; minor automotive repair; and the vending of prepackaged soft drinks, tobacco products, and snack foods from automatic vending machines.

B. This definition shall not be deemed to include such things as body or fender work, painting or major automotive repairs.

C. Gasoline service stations may also provide a towing service limited to no more than two trucks or equipment rental, subject to use permit conditions of approval by the reviewing agency.

D. When a conditional use permit shall have been granted to authorize an automobile service station or gasoline service station on a lot, the only use permitted thereon shall be the supplying of those goods and services described in sections A and C above unless such conditional use permit expressly authorizes other uses. Permitted uses otherwise allowed in the zoning district in which a service station is located are not allowed in conjunction with a service station unless specifically authorized by a conditional use permit. (Ord. 1307 N.S. § 1, 1996; Ord. 1135 N.S. § 1, 1993; Ord. 715 N.S. § 1, 1985; Ord. 559 N.S. § A (part), 1981)

18.04.050 Automobile wrecking.

"Automobile wrecking" means the dismantling or disassembling of used motor vehicles or trailers, the storage, sale or dumping of dismantled, obsolete or wrecked vehicles or their parts, and the towing of such vehicles or parts in connection with such activity. (Ord. 559 N.S. § A (part), 1981)

18.04.053 Balcony

A platform that projects from the wall of a building that is surrounded by a railing or balustrade does not require separate understructure for support.

18.04.055 Basement.

"Basement" means a story whose floor is more than twelve inches, but not more than one-half of its story height, below the average level of the adjoining ground (as distinguished from a "cellar," which is a story more than one-half below such level). A basement, when used as a dwelling, shall be counted as a story for purposes of height measurement, and as a half-story for purposes of side yard determination. (Ord. 559 N.S. § A (part), 1981)

18.04.057 Boardinghouse or roominghouse.

"Boardinghouse or roominghouse" means a dwelling or part thereof where meals and/or lodging are provided for compensation. (Ord. 899 N.S. § 1 (part), 1989)

18.04.060 Building.

"Building" means any structure having a roof supported by columns or walls, used or intended to be used for the shelter or enclosure of persons, animals or property. When such a structure is divided into separate parts by one or more unpierced walls extending from the ground up, each part is deemed a separate building, except as regards minimum side-yard requirements as provided in Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.063 Building coverage

"Building Coverage" means the ratio of the horizontal area measured from the exterior surface of the exterior walls of the ground floor of all principal and accessory buildings on a lot to the total lot area. (Ord. 1473 N.S. § 1, 2000)

18.04.064 Building envelope

"Building Envelope" is the volume of space for the principle building as defined by the minimum setbacks and the maximum allowable building height.

18.04.065 Building, height of.

"Height of building" means the vertical distance from the average contact ground level at the front wall of the building, to the highest point of the coping of a flat roof or mansard roof, or the highest point of a ridge for gable, hip or gambrel roofs. (Ord. 1323 N.S., § 3, 1997; Ord. 559 N.S. § A (part), 1981)

18.04.070 Building, main.

"Main building" means a building in which is conducted the principal use of the building site on which it is situated. In any residential district, any dwelling shall be deemed to be a main building on the building site on which the same is located. (Ord. 559 N.S. § A (part), 1981)

18.04.070.01 Business support service.

"Business support service" means an establishment entirely within a building, providing other businesses with services including maintenance, repair and service, testing, rental, etc. Business support services include but are not limited to the following:

- Advertising and mailing
- Building maintenance
- Equipment rental and leasing
- Janitorial supplies and services
- Management and consulting services
- Messenger, courier, postal and delivery services
- Office supply
- Packaging and labeling
- Personnel and employment services
- Photofinishing
- Photocopying, printing and blueprinting
- Protective services
- Travel

18.04.071 Caretakers unit.

"Caretakers unit" means a dwelling unit accessory *subordinate* to a principal use on a site and intended for occupancy on the same site, as a caretaker, security guard, servant or similar position generally requiring residence on the site. (Ord. 1055 N.S. § C (part), 1991)

18.04.075 Cessation of use.

As used in Division I of this title, a use shall be deemed to have ceased when it has been discontinued, either temporarily or permanently, whether with the intent to abandon such use or not. (Ord. 559 N.S. § A (part), 1981)

18.04.077 City Geologist.

The term City Geologist as used in this title means a registered professional geologist who is certified by the State of California in the specialty of engineering geology (C.E.G.) who is either a staff member or a consultant retained by the City. (Ord. 1176 § 7, 1994)

18.04.077.5 Clear triangle

Is a triangular area bounded by the street right-of-way lines of a corner lots and a line joining points along said street lines twenty feet from the point of intersection.

18.04.080 Combining district.

"Combining district" means a district within which certain regulations and requirements apply in addition to, and are combined with, regulations and requirements of another district. (Ord. 559 N.S. § A (part), 1981)

18.04.085 Commercial.

"Commercial" means any activity on or use of land which involves the buying, selling, processing or improving of things not produced on the land, and having financial gain as the primary aim of the activity or use, whether or not such activity or use is for hire or on account of the buyer, seller, processor or improver. (Ord. 559 N.S. § A (part), 1981)

18.04.090 Commercial recreation.

"Commercial recreation" means a recreation facility operated as a business and open to the general public for a fee. Commercial recreation uses include but are not limited to; theaters, bowling lanes, batting cages, billiard parlors, gymnasiums, exercise studios, martial arts or dance studios, golf courses and driving ranges. (Ord. 1215 N.S. § 5, 1995; Ord 1135 N.S. § 3, 1993; Ord. 604A N.S. § A, 1983; Ord. 559 N.S. § A (part), 1981)

18.04.093 Commercial Services.

Retail establishments that primarily render services rather than goods. Such services may include but not be limited to the following:

- Cellular and satellite phone sale and services
- Cable and satellite television sale and service
- Decorating and design services
- Florists
- Video/DVD rental
- Picture framing
- Jewelry repair
- Repair services

18.04.095 Community apartment.

"Community apartment" means a project in which an undivided interest in land is coupled with the right of exclusive occupancy of an apartment located thereat. (Ord. 559 N.S. § A (part), 1981)

18.04.100 Conditional use.

"Conditional use" means a use of land for which a conditional use permit is required, pursuant to Chapter 18.54 of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.105 Condominium.

"Condominium" means individual ownership of a dwelling unit within a multiple-unit structure exclusive of the land underlying such structure. (Ord. 559 N.S. § A (part), 1981)

18.04.110 Condominium development.

"Condominium development" means a structure and appurtenant premises divided in ownership by the existence of the condominiums as now or hereafter defined in Section 783 of the Civil Code of the state, and shall include instances where ownership is so divided following prior single ownership of the entire structure and premises, as well as new structures so divided in ownership. (Ord. 559 N.S. § A (part), 1981)

18.04.115 Construction yard.

"Construction yard" means an area on or immediately adjacent to a major construction or demolition site used on a temporary basis for the parking and storage of equipment used in the project, and the storage and preparation of materials and other items used in the project. Such yard may include construction offices and such shops as are necessary for work on the immediate project. (Ord. 559 N.S. § A (part), 1981)

18.04.117 Convenience Market/Store.

"Convenience market/Store" is defined as a retail establishment which contains less than five thousand square feet of gross floor area allocated for the sale of groceries, staples, dairy products, sundry items, tobacco products and/or alcoholic beverages. This definition also includes a liquor store, within which all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages. This definition, however, does not include a full-service grocery store containing less than five thousand square feet of gross floor area wherein at least ten percent of that floor area is allocated for the sale of fresh meat, seafood and fresh produce products. (Ord. 1307 N.S. § 2, 1996; Ord. 1215 N.S. § 6, 1995)

18.04.120 Corporation yard; service yard.

"Corporation yard" or "service yard" means buildings and premises, including offices, used by any person or by the city for the storage, maintenance, repair and processing of equipment, materials and other items involved in construction or maintenance of physical facilities having permanently fixed locations, or in the operation of a fleet of rolling stock. (Ord. 559 N.S. § A (part), 1981)

18.04.120.10 Deck

A platform, either freestanding or attached to a building that is supported by piers, pillars or posts.

18.04.121 Delivery or service vehicle.

"Delivery or service vehicle means" any car, motorcycle, scooter, van or truck used in a normal business capacity to deliver a product, service or good to any location off-site of the primary business establishment. (Ord. 1055 N.S. § C (part), 1991)

18.04.123 Display area, outdoor.

"Outdoor display area" means any area, either permanent or temporarily devoted to, or used for the display of any product or services which is external to a building. (Ord. 1055 N.S. § C (part), 1991)

18.04.125 District.

"District" means a portion of the territory of the city within which certain uniform regulations and requirements, or various combinations thereof, apply under the provisions of Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.130 Domestic pet.

"Domestic pet" means any of the various animals customarily kept as household pets (except exotic animals). (Ord. 559 N.S. § A (part), 1981)

18.04.132 Drive-in or drive-through establishment.

"Drive-in or drive-through establishment" means:

A. Any place or premises where a portion of the business conducted involves the sale, dispensing or serving of food, beverages or merchandise or the provision of service to vehicles and/or their occupants.

B. Drive-in or drive-through establishments shall include, but not be limited to, drive-thru photo sales, car washes, service stations, and drive-up window facilities for use by a fast-food restaurant, bank or savings and loan association or similar institution, and other similar uses as determined by the community development director (Ord. 846 § 2, 1987)

18.04.135 Driveway.

"Driveway" means a permanently surfaced area on a lot designed and required to provide direct access for vehicles between a street and a private garage, carport or other permitted parking space or parking area or loading area. (Ord. 559 N.S. § A (part), 1981)

18.04.140 Driveway aisle, major.

"Major driveway aisle" means a driveway providing principal access to the parking area or the driveway providing principal circulation throughout the parking areas or premises. (Ord. 559 N.S. § A (part), 1981)

18.04.143 Driveway apron.

"Driveway apron" means a paved area providing principal access from a drive aisle or street right-of-way to a garage or other covered parking space. (Ord. 1473 N.S. § 2, 2000)

18.04.145 Dwelling.

"Dwelling" means any building or portion thereof designated or used exclusively as the residence or sleeping place of one or more persons, but not including a tent, cabin, trailer or trailer coach. (Ord. 559 N.S. § A (part), 1981)

18.04.150 Dwelling, multifamily.

"Multifamily dwelling" means a building designed and used as a residence for three or more families living independently of each other and containing three or more dwelling units. (Ord. 1050 N.S. § 1 (part), 1991; Ord. 559 N.S. § A (part), 1981)

18.04.154 Dwelling, single-family, attached.

"Single-family attached dwelling" means a dwelling attached to another dwelling on at least 50 percent of the length of the attached side of the building, sometimes called a townhouse, duet, or row house. One or more walls extend from foundation to roof, which separate it from adjoining structures and form a property line. Single-family attached dwellings also include modified setback dwellings as defined by the Morgan Hill Municipal Code. (Ord. 1641, N.S. § 7, 2003; Ord. 1415 N.S. § 1, 1998; Ord. 1050 N.S. § 1 (part), 1991; Ord. 559 N.S. § A (part), 1981)

18.04.155 Dwelling, single-family, detached.

"Single-family detached dwelling" means a dwelling designed to contain a single dwelling unit situated on a single lot. (Ord. 1050 Ord. § 1 (part), 1991; Ord. 559 Ord. § A (part), 1981)

18.04.156 Dwelling, single-family, modified setback.

A "modified setback dwelling" is defined as follows:

A. A dwelling physically separated from an adjacent dwelling on a separate lot of record by a minimum of three feet and a maximum of six feet, and architecturally connected by a design element such as a wing wall, trellis, or fireplace, to give the appearance of attachment; or

B. A dwelling physically separated from an adjacent dwelling on a separate lot of record whereby the adjacent lots are designed with an alternative lot configuration, such as a Z-lot or off-set property lines, and the units are situated such that they give the appearance of attachment from the public right-of-way. (Ord. 1641, N.S. § 8, 2003)

18.04.157 Dwelling, two-family or duplex.

"Two-family" or "duplex dwelling" means a structure which is designed and used as a residence for two families living independently of each other and containing two dwelling units. (Ord. 1050 N.S. § 1 (part), 1991; Ord. 899 Ord. § 1 (part), 1989)

18.04.160 Dwelling unit.

"Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking, and sanitation facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy by one family on a nontransient (less than 30-day stay) basis and having not more than one kitchen. (Ord. 1415 N.S. § 2, 1998; Ord. 559 N.S. § A (part), 1981)

18.04.162 Dwelling unit, primary.

"Primary dwelling unit" means a single-family dwelling located on a separate lot with no other dwellings on the lot except for a secondary dwelling unit. (Ord. 1215 N.S. § 7, 1995; Ord. 884 N.S. § 1, 1989)

18.04.164 Dwelling unit, secondary.

"Secondary dwelling unit" means a detached or attached dwelling unit which provides complete independent living facilities for one or more persons which is located on a lot which contains an existing single-family dwelling. A secondary dwelling unit must be located in a permanent structure and includes provisions for living, sleeping, eating, cooking, sanitation and has a private entry accessed from the exterior of the building. Secondary dwelling units are not "accessory structures" as defined in Sections 18.04.015 and 18.56.020 of this title. (Ord. 1323 N.S. § 4, 1997; Ord. 1215 N.S. § 8, 1995; Ord. 884 N.S. § 2, 1989)

18.04.164.1 Emergency or transitional housing facility.

A residential facility which provides room and board for persons who do not have housing providing either emergency shelter or overnight housing; or longer term but limited in duration transitional (e.g. 18 months) housing for persons or households until more permanent arrangements can be made. Such facilities also provide protection, counseling, rehabilitation and pre-placement screening for the occupants.

18.04.164.5 Escort agencies

"Escort agencies" means a person, business or other agency which provides or dispatches a person or persons who, for any form of consideration or gratuity, agree or offer to act as a companion, guide, or date for another person. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.165 Family.

"Family" means an individual or group of individuals living together who constitute a bona fide single housekeeping unit in a dwelling unit. "Family" shall not be construed to include a group of individuals occupying a hotel or lodging house of any kind. (Ord. 1415 N.S. § 3, 1998; Ord. 559 N.S. § A (part), 1981)

18.04.165.5 Farmers market.

"Farmers market" is defined as a permanent or temporary market facility in which the primary activity is the sale of fresh agricultural goods on a year round or seasonal basis. The sale of agricultural goods shall constitute at least two thirds of the gross sales on the property. A temporary market facility shall consist of multiple vendors at a single location which distinguishes it from an agricultural stand. (Ord. 1215 N.S. § 9, 1995)

18.04.170 Fence.

"Fence" means a structure made of wire, wood, metal, masonry or other material used as a screen or enclosure for a field, yard or lot. (Ord. 559 N.S. § A (part), 1981)

18.04.175 Fence height.

~~"Fence height" means the difference in elevation of the ground surface continuously along the base of the ground level on the higher side of the fence to the top of the fence. Where a fence is erected atop or within five feet of a retaining wall on the property line or on the same lot, the height of the fence shall include the retaining wall.~~

"Fence height" is measured from the bottom to the top of the fence. Fences placed on top of a retaining wall do not include the height of retaining wall.

18.04.177 Financial service.

"Financial service" means a use providing financial services to individuals or other entities. The term "financial service" includes banks, savings and loan institutions, loan and lending activities and similar services. (Ord. 899 N.S. § 1 (part), 1989)

18.04.180 Floodplain.

"Floodplain" means that portion of land adjacent to a creek channel which is covered by water during a one-hundred-year flood event. (Ord. 559 N.S. § A (part), 1981)

18.04.185 Floodwaters.

"Floodwaters" means a body of water resulting from an overflow of a river, channel, bay, drainage canal or backwater, due to inadequate downstream capacity, which inundates the land. (Ord. 559 N.S. § A (part), 1981)

18.04.190 Floodway.

"Floodway" means a body or channel of a stream, and those portions of the floodplain adjoining the channel, that are required to carry and discharge the floodwater or flood flows of any river or stream, including but not limited to flood flows associated with the regulatory one-hundred-year flood. (Ord. 559 N.S. § A (part), 1981)

18.04.195 Floor area.

"Floor area" means the sum of the areas of the several floors of structure(s), as measured by the exterior faces of the walls, less any area within the structure(s) devoted to parking, vehicular atriums or enclosed malls and similar areas. (Ord. 559 N.S. § A (part), 1981)

18.04.200 Freeway.

"Freeway" means a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands, or in respect to which such owners have only limited or restricted right or easement of access. The term "freeway" has the same meaning as the term "freeway" as defined in the California Streets and Highways Code. (Ord. 559 N.S. § A (part), 1981)

18.04.205 Garage, private.

"Private garage" means an attached or detached accessory dwelling located upon a lot developed with a residential dwelling or dwellings (or a portion of a main residential building) used by the occupants resident upon the premises principally for the storage of passenger vehicles, and other vehicles and equipment permitted to be located upon the lot. (Ord. 559 N.S. § A (part), 1981)

18.04.210 Garage, public.

"Public garage" means a structure or portion thereof, other than a private garage, used for the storage, sale, hire, care, repair or refinishing of motor vehicles or other vehicles; except that a structure or part thereof used only for storage (as in the case of a public parking area) or display (as in the case of an automobile sales area) of motor vehicles, but not for transients, and at which fuels and oils are not sold, and such motor vehicles are not equipped, repaired or hired, shall not be deemed to be a public garage. (Ord. 559 N.S. § A (part), 1981)

18.04.215 General Plan.

"General Plan" means the General Plan of the City of Morgan Hill, California, as adopted by the city council on October 15, 1980, and as may be amended from time to time. (Ord. 559 N.S. § A (part), 1981)

18.04.217 Guest house.

"Guest house" means ~~an accessory~~ *a* building containing a lodging unit without kitchen facilities, and used to house occasional visitors or nonpaying guests of the occupant of *a the primary* dwelling unit on the same *lot* site. *A guest house with a kitchen facility is considered a secondary dwelling unit.* (Ord. 899 N.S. § 1 (part), 1989)

18.04.218 Hazardous materials reprocessing.

Hazardous materials reprocessing means one or more activity to manufacture, clean, repackage or perform another industrial operation involving "hazardous waste" as defined by the Santa Clara County hazardous waste management plan. This definition relates to hazardous wastes which are brought onto a site and reprocessed, with the product sent off-site. The definition does not apply to (a) transportable treatment units (TTU) which are designed to be moved either intact or in modules and which are intended to be operated at a location for a limited time; or (b) permanent on-site hazardous waste facilities at locations where hazardous waste is produced and which are owned by, leased to or under the control of the producer of the waste; all such facilities requiring state licensing to operate; or (c) "small quantity generators" as defined by the Santa Clara County hazardous waste management plan, including but not limited to small photo laboratories, dry cleaning plants and similar businesses, which are not included in (b) above regarding reprocessing of off-site hazardous waste or (d) a "salvage yard" defined by Section 18.04.390 of this chapter unless hazardous materials are processed or stored therein. Hazardous materials reprocessing is not allowed in any zoning district except an M-C campus industrial district, and is allowed in such district only upon issuance of a conditional use permit and a determination of consistency with the Santa Clara County hazardous waste management plan or a city-designated equivalent. (Ord. 1104 N.S. § 1 (Exh. A)(part), 1992)

18.04.219 Hazardous waste.

"Hazardous waste" means a waste or combination of wastes, which because of its quantity, concentration, toxicity, corrosiveness or flammability, or physical, chemical or infectious characteristics may (1) cause or significantly contribute to an increase in mortality or an increase in serious, irreversible or incapacitating illness; or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. (Ord. 1104 N.S. § 1 (Exh.A)(part), 1992)

18.04.220 Home improvement center.

"Home improvement center" means a retail establishment which carries a full line of building materials, appurtenances and decorator items for individual "do-it-yourselfer" residents, to facilitate the improvement, rehabilitation and maintenance of individual dwellings. This use is different in function from a building supply yard or lumberyard which stores large volumes of building materials for contractors, home builders and/or individuals, most of which is stored in special sheds or out-of-doors. (Ord. 559 N.S. § A (part), 1981)

18.04.225 Home occupation.

"Home occupation" means a use customarily carried on in a dwelling by a resident thereof, which use is merely incidental to the residential use of the dwelling, and subject to criteria as provided in Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.230 Industrial park/business park.

"Industrial park/business park" means a combination of industrial and/or commercial uses of contiguous lots specifically planned for industry, having continuity of design and function and uniform or integrated standards of development established by contract, covenant or deed restriction. (Ord. 559 N.S. § A (part), 1981)

18.04.232 Interim Basis.

"Interim basis" means a temporary basis not to exceed three (3) years, and which is never intended, at any time during occupancy, to be a permanent occupancy. (Ord. 1653 N.S., § 1, 2004)

18.04.235 Kennel.

"Kennel" means a building or a portion of a building, or other enclosure, used to confine, feed, exercise, show or provide shelter for more than five cats or dogs, ten weeks of age or older. Veterinarians' offices ("Veterinary clinics and hospitals") and pet stores ("Retail sales") are specifically excluded, although pet care supplies may be sold as an ancillary activity to the primary shelter use.

18.04.236 Kitchen.

"Kitchen" means a room, or portion of a room primarily designed, constructed, or used for the preparation of food and containing complete cooking facilities including, but not limited to a stove or separate cook top and oven, refrigerator and kitchen sink. (Ord. 1415 N.S. § 4, 1998)

18.04.240 Landscaping.

"Landscaping" means the planting and maintenance of trees, shrubs, lawns and other evergreen ground cover or material, including inorganic accessory materials utilized to accent or complement the vegetation. (Ord. 559 N.S. § A (part), 1981)

18.04.244 Lodging Facilities.

"Lodging facilities" means facilities with guest rooms or suites, provided with or without meals or kitchen facilities, rented to the general public for overnight or other temporary lodging (less than 30 days). These facilities may typically include a variety of services in addition to lodging, including restaurants, meeting facilities, personal services, and other accessory guest facilities including swimming pools, tennis courts, indoor athletic facilities, accessory retail uses, parking, etc. Does not include adult hotels or adult motels. (See "Adult Hotel/Adult Motel" and "Adult Business".)

18.04.245 Lot.

"Lot" means a piece or parcel of land owned as a single unit in common ownership, occupied or intended to be occupied by a principal building or a group of such buildings and accessory buildings, or utilized for a principal use and uses accessory thereto, together with such open spaces as are required by this chapter, and having frontage on and access to an approved and accepted city street which meets the standards of width and improvements as specified in the regulations of the city contained in or adopted pursuant to the subdivision title of this code, and Chapter 18.50 of this title on street improvements as to the frontage of the lot involved, or having frontage on and access to an approved private street or major driveway aisle for properties that are located in the R-2, R-3, R-4 and CC-R districts. (Ord. 1743 N.S. § 1, 2005; Ord. 559 N.S. § A (part), 1981)

18.04.250 Lot area.

"Lot area" means the net site area of a lot, expressed in terms of acres or square feet, exclusive of any public street easements, and exclusive of that percentage of the total area of any other public easements or private easements which is in excess of fifteen percent of the net site area of the lot, exclusive of any such public street easements, which net site area as thus limited can be legally occupied by a principal building or a group of such buildings and accessory buildings, or can be utilized for a principal use and uses accessory thereto, together with such open spaces as are required by Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.255 Lot, corner.

"Corner lot" means a lot abutting upon two streets at their intersections, or abutting upon a curvature of a single street, where such streets or curvature form an interior angle of less than one hundred thirty-five degrees. The point of intersection of the street lot lines, extending, is the "corner." A corner lot may have more than one corner and may also abut upon one or more streets which do not form the corner or corners of the lot. (Ord. 559 N.S. § A (part), 1981)

18.04.260 Lot coverage or building coverage.

"Lot coverage" or "building coverage" means that portion of the lot area covered by a building. (Ord. 559 N.S. § A (part), 1981)

18.04.265 Lot, depth of.

"Depth of lot" means the horizontal distance from the midpoint of the front lot line to the midpoint of the rear lot line, or to the most distant point on any other lot line where there is no rear lot line. (Ord. 1055 N.S. § C (part), 1991; Ord. 559 N.S. § A (part), 1981)

18.04.270 Lot, interior.

"Interior lot" means a lot which has only one front lot line. (Ord. 559 N.S. § A (part), 1981)

18.04.272 Lot, Z.

A "Z-lot" is a lot in which the interior side property line(s) form the letter "z". (Ord. 1641, N.S. § 7, 2003;

18.04.275 Lot line, front.

A. "Front lot line" means any of the following:

1. Each street lot line of an interior or through lot;
2. On a corner lot, the shorter lot line abutting a street or the line designated as the front lot line; and
3. Any street lot line not forming a corner of a corner lot.

B. If the side yard setback facing the street on a corner is at least as deep as the front yard setback requirement, the community development director may designate the front lot line of corner lots for setback purposes. (Ord. 1025 N.S. § 3 (part), 1991; Ord. 559 N.S. § A (part), 1981)

18.04.280 Lot line, rear.

"Rear lot line" means the lot line opposite and most distant from the front line, where such lot line is not also a street lot line. (Ord. 559 N.S. § A (part), 1981)

18.04.285 Lot, through.

"Through lot" means a lot which has two or more front lot lines which do not intersect to form a corner lot. (Ord. 559 N.S. § A (part), 1981)

18.04.290 Lot width.

"Lot width" means the distance measured along a straight line between the midpoints of the side property lines. (Ord. 1323 N.S. § 5, 1997; Ord. 559 N.S. § A (part), 1981)

18.04.291 Major motor vehicle repair.

"Major motor vehicle repair" means all repair, servicing or maintenance work not provided for under "minor motor vehicle repair," including, but not limited to, general repair, rebuilding or reconditioning of: (a) major vehicle components, such as engines, transmissions and differentials, (b) non-passenger vehicles, motor homes or trailers and trucks exceeding one and one-half ton capacity, or (c) body, frame or fender components, including collisions service, upholstery or painting. (Ord. 980 N.S. § 3 (part), 1990)

18.04.292 Manufactured housing.

"Manufactured housing" means a single-family detached housing that is built to the National Manufactured Housing Construction and Safety Standards Act of 1974, and shall include structures known as manufactured homes or mobile homes. (Ord. 1050 N.S. § 1 (part), 1991)

18.04.292.5 Massage parlor.

As distinct from other massage establishments, "Massage Parlor" means any place, for any form of consideration or gratuity, in which massage, alcohol rubs, administration of fomentation, electric or magnetic treatment or any other treatment manipulation of the human body occurs. The exceptions to this definition include places in which services are provided by licensed doctors, nurses, osteopaths, chiropractors, teachers, barbers, beauticians or by massage technicians who have received at least 100 hours of instruction and supervised training at recognized massage schools or are licensed by the State. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.293 Mini-storage facilities.

A. "Mini-storage facility" means a building or group of buildings, in a controlled access and fully enclosed compound, which contain separate storage spaces of varying size, for the dead storage of customer's goods and possessions.

B. "Dead storage" means goods that are not radioactive, explosive, flammable or hazardous materials, that are not living plants or animals, that are not in use and not associated with any commercial use on the premises. (Ord. 839 N.S. § 2, 1987)

18.04.294 Medical office.

"Medical office" means a use providing consultation, diagnosis, therapeutic, preventative, or corrective personal treatment services by doctors, dentists, medical and dental laboratories, and similar practitioners of medical and healing arts for humans licensed for such practice by the state of California. (Ord. 899 N.S. § 1 (part), 1989)

18.04.295 Minor motor vehicle repair.

"Minor motor vehicle repair" means general servicing and maintenance of passenger cars and trucks not exceeding one and one-half tons capacity. Such servicing may include, but not be limited to: (a) the repair or replacement of worn or defective parts and gaskets external to the basic engine block, such as intake and exhaust manifolds, carburetors, and water pumps, (b) engine replacement, (c) the repair or replacement of worn or defective brake parts, clutch parts, mufflers, exhaust system parts, wheel bearings, shock absorbers, tires, batteries, spark plugs and other accessible minor parts, and (d) maintenance work such as the changing or supplementing of vehicle fluids and the adjustment of mechanical components while on the vehicle. (Ord. 1135 N.S. § 3, 1993; Ord. 980 N.S. § 3 (part), 1990)

18.04.296 Mobile home.

"Mobile home" means a vehicle designed and equipped for human habitation, and for being drawn by motor vehicle. A mobile home is a type of "trailer" or "trailer coach" or "semi-trailer" as such terms are defined in the California Vehicle Code, and has the same meaning as "mobile home," as such term is defined in the California Health and Safety Code. For the purposes of Division I of this title, the terms "mobile home," "travel trailer" and "trailer," which are each separately defined terms in this division, are mutually exclusive terms. The term "mobile home" does not include "modular" or "manufactured dwellings" intended for assembly on-site on permanent foundations and not designed for subsequent or repeated relocation. (Ord. 899 N.S. § 1 (part), 1989; Ord. 559 N.S. § A (part), 1981)

18.04.300 Motel, motor hotel.

"Motel" or "motor hotel" means a group of buildings containing individual sleeping or living units, designed for use by automobile tourists or transients, with garage attached or parking space conveniently located to each unit. (Ord. 559 N.S. § A (part), 1981)

18.04.305 Natural land slope.

"Natural land slope" means the predominant slope (or slopes) in its natural condition, disregarding minor surface humps or hollows. (Ord. 559 N.S. § A (part), 1981)

18.04.310 Nonconforming building.

"Nonconforming building" means a building or structure or portion thereof which:

- A. At the time of construction complied with the height requirements of the district in which it was located, and was sited on the lot on which it was constructed in compliance with the area and yard requirements of such district at that time; but
- B. Does not now conform to the presently existing height regulations of the district where located; or
- C. Is sited on the lot where it is situated in such a manner that there is a lack of conformity with the presently existing area or yard requirements of the district where located. (Ord. 559 N.S. § A (part), 1981)

18.04.315 Nonconforming lot.

"Nonconforming lot" means a lot which, when lawfully created or established, complied with the width and area requirements of the district where located, but which does not conform to the presently existing area or width regulations of the district where located, or which does not conform to the presently existing requirements of the Subdivision Ordinance governing lot standards. (Ord. 559 N.S. § A (part), 1981)

18.04.320 Nonconforming use.

"Nonconforming use" means a use which, when commenced, complied with the use regulations of the district in which such use was commenced, and which does not conform to the presently existing use regulations of the district where the use is being conducted or carried on. The term "nonconforming use" shall be applicable to use of buildings, structures and land. (Ord. 559 N.S. § A (part), 1981)

18.04.321 Non-Profit Organization

"Non-profit organization" means an organization formed for a charitable or social welfare purpose, and which possesses non-profit status pursuant to Internal Revenue Code section 501(c)(3). (Ord. 1653 N.S., § 1, 2004)

18.04.322 Nudity or semi-nudity.

"Nudity" means the appearance of the human anus, male genitals, female genitals or the areola or nipple of the female breast. "Semi-nudity" means the covering of these areas solely by small patches of cloth or similar material, held to the body solely by straps, strings or adhesives. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.325 Nursery.

"Nursery" means an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. (Ord. 559 N.S. § A (part), 1981)

18.04.330 Nursery school, children's nursery school, child day care service, family day care home.

"Nursery school," "children's nursery school," "child day care service" or "family day care home" means an establishment for the part-time care and instruction of children, whether or not for compensation, other than those resident on the site. Uses under this definition shall be further defined in accordance with the following hierarchy:

A. Small Family Day Care Homes. The use of a residential dwelling providing care for up to eight children.

B. Large Family Day Care Homes. The use of a residential dwelling to provide care for up to fourteen children.

C. Nursery Schools. An establishment providing care and instruction to more than twelve children. (Ord. 1473 N.S. § 3, 2000; Ord. 1215 N.S. § 11, 1995; Ord. 726 N.S. § 2, 1985; Ord. 559 N.S. § A (part), 1981)

18.04.335 Nursing home or convalescent hospital.

"Nursing home" or "convalescent hospital" means any place or institution which makes provisions for bed care, or for chronic or convalescent care for one or more persons, exclusive or relatives, who by reason of illness or physical infirmity are unable to properly care for themselves. Institutions for the care of alcoholics, drug addicts, persons with mental diseases, and persons with communicable diseases, such as contagious tuberculosis, are not included within the meaning of "nursing home" or "convalescent hospital." (Ord. 559 N.S. § A (part), 1981)

18.04.336 Office, administrative or general.

"Administrative office" means offices and service facilities performing as headquarters, regional, or other level management for a company, or other establishments of a company, or for other firms and institutions and having limited contact with the general public. Activities include a range of day-to-day office administrative services, including financial planning; billing and record keeping; personnel

18.04.337 Off-site Improvements.

"Off-site improvements" means those improvements required to be installed as a result of development, either in the form of new construction, tenant improvements, or remodeling, outside the boundaries of the parcel. (Ord. 1653 N.S., § 1, 2004)

18.04.338 On-site Improvements.

"On-site improvements" means those improvements required to be installed as a result of development, either in the form of new construction, tenant improvements, or remodeling, within the boundaries of the parcel. Examples of such improvements include the requirements of Chapters 18.24, 18.50, and 18.74 of the Municipal Code. (Ord. 1653 N.S., § 1, 2004)

18.04.340 Open space, essentially unimproved.

A. "Open space," for the purposes of Division I of this title, means any parcel or area of land or water which is essentially unimproved and devoted to an open-space use, as defined in Section 65560 of the Government Code. "Essentially unimproved" means any parcel of land with a building coverage of five percent or less of the total parcel area.

B. "Open space" also means an outdoor area created by artificial or natural design not otherwise occupied by buildings (open spaces may be integral with, but may not be totally covered by, building areas, except as otherwise specified by district regulations), or paved areas for vehicular circulation or parking. (Ord. 559 N.S. § A (part), 1981)

18.04.345 Overlay district.

"Overlay district" means a district described by the zoning map, within which, through imposition of a special designation, additional regulations and requirements apply in addition to those of the district to which such designation is added. (Ord. 559 N.S. § A (part), 1981)

18.04.346 Owner.

An "owner" of an "adult business" means any person, corporation, partnership or other form of ownership, which (a) controls the business, other than a hired manager; or (b) receives over ten percent of the net receipts of the business. The word "owner" applies to any and all "owners" singly and collectively. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.350 Parking space.

"Parking space" means a permanently surfaced area of not less than one hundred eight square feet, either within a structure or in the open, excluding driveways or access drives, for the parking of a vehicle. (Ord. 559 N.S. § A (part), 1981)

18.04.352 Patio

A level surfaced area which has an elevation of not more than 18 inches, and without walls or a roof. A patio may be constructed of any materials.

18.04.355 Performance standards.

"Performance standards" means regulations for the control of "dangerous or objectionable elements," as defined in Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.357 Personal service.

A use providing services of a personal convenience nature. Personal service uses include but are not limited to the following:

- Beauty and barber shops
- Nail salons
- Tattoo parlors
- Massage and health spa establishments
- Shoe repair
- Self-service laundry and cleaning services
- Laundry and cleaning pick-up stations (where bulk cleaning and servicing is done elsewhere)
- Repair, alteration and fitting of clothes and personal accessories

18.04.358 Police permit.

A "police permit" shall mean a permit, as described in Section 5.60.010 et seq. of the Municipal code, and issued by the chief of police or other person appointed to act in his or her position by the city manager, which verifies the credentials and law enforcement history, if any, of the owner or owners and/or manager or managers of any "adult business" and other matters necessary to protect the public health, safety and general welfare. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.358.5 Pool house.

"Pool house" means a building with the immediate vicinity of a swimming pool which may contain changing rooms, restrooms, shower facilities, kitchen and recreation room. A pool house with a kitchen and full bath facilities is considered a secondary dwelling unit.

18.04.358.8 Porch

A covered but unenclosed projecting platform which extends from the main wall of a building that may or may not use columns for other ground supports for structural purposes.

18.04.360 Principal permitted use.

"Principal permitted use" means a use for which no conditional use permit is required, but which may be subject to site plan and architectural approval, planned unit development approval, or performance standards procedure, as specified in Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.364 Public facility.

"Public facility" means a noncommercial use established primarily for the benefit and enjoyment of the community in which it is located, including a library, school, museum, recreation center, water well, reservoir and similar facilities. (Ord. 899 N.S. § 1 (part), 1989)

18.04.365 Public use.

"Public use" means a use operated exclusively by a public body, such use having the purpose of serving the public health, safety or general welfare, and including uses such as public schools, parks, playgrounds, hospitals, and administrative and service facilities. (Ord. 559 N.S. § A (part), 1981)

18.04.370 Quasi-public use.

"Quasi-public use" means a use operated by a private nonprofit educational, religious, recreational, charitable or medical institution, such use having the purpose primarily of serving the general public, and including uses such as churches, private schools, and universities, community, youth and senior citizen recreational facilities, private hospitals, and the like. (Ord. 559 N.S. § A (part), 1981)

18.04.373 Research and development.

"Research and development" means a use engaged in study, testing, design, analysis, and experimental development of products, processes, or services, including incidental manufacturing of products or provision of services to others. (Ord. 899 N.S. § 1 (part), 1989)

18.04.381 Recreational vehicle long-term space.

"Recreational vehicle long term space" is one which is occupied by any resident or family or vehicle for longer than two hundred and forty-four days in any consecutive three hundred and sixty-five day period, which would be in violation of this section. A short term space, occupied thirty consecutive days or less; or a transitional space, occupied thirty-one to two hundred and forty-four days, in any consecutive three hundred and sixty-five day period, is not a "recreational vehicle long term space." (Ord. 1233 N.S. § 4, 1995; Ord. 1100 N.S. § 1 (part), 1992)

18.04.382 Recreational vehicle (RV) park.

"Recreational Vehicle (RV) park" means any use of land upon which two or more recreational vehicles are located, established or maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation or vacation or transitional housing purposes. For purposes of this definition, RV parks shall be owned by a single owner or organization and all recreational vehicle lots or spaces shall be rented or leased to the same person or group of persons who occupy the same recreational vehicle for a period not to exceed that provided by section 18.49.010 et seq. The term of stay or occupancy, and mix thereof, by vehicles in different sections of a park may be defined by each conditional use permit for each park, except that the maximum time limits specified in Section 18.04.381 shall be observed. For spaces which are defined for short term or transitional occupancy, no longer term occupancy shall be permitted without an amendment to the conditional use permit. (Ord. 1233 N.S. § 5, 1995; Ord. 1100 N.S. § 1 (part), 1992; Ord. 1059 N.S. § 1, 1991)

18.04.382.5 Recreational vehicle short-term space.

A recreational vehicle park space which is designated for stays of thirty days or less in one continuous stay, and no more than ninety days in any consecutive three hundred and sixty-five day period, shall be determined to be a "recreational vehicle short-term space," providing for short-term stays for recreational vehicles. (Ord. 1233 N.S. § 6, 1995)

18.04.382.7 Recreational vehicle transitional space.

A recreational vehicle space which is designed for stays of thirty-one to two hundred forty-four days in any consecutive three hundred and sixty five day period shall be determined to be a "recreational vehicle transitional space," for persons moving to the city who may be in transition to permanent housing and require a temporary address in lieu of such permanent housing. The number, term of stay, location within the park and other parameters of recreational vehicle transitional spaces, as a proportion of a recreational vehicle park's spaces, shall be determined by conditional use permit. Any and all short-term stays, singly or combined, as defined in Section 18.040.382.5 shall be included as a portion of a transitional stay, if such short-term stay occurs within the same consecutive three hundred sixty-five day period as the transitional stay. (Ord. 1233 N.S. § 7, 1995)

18.04.382.8 Restaurant, fast food.

An establishment whose principal business is the sale of prepared or quickly prepared foods, frozen desserts, or beverages in disposable containers and wrappers to the customer for consumption either within the restaurant building or for carryout. Customers pay before food is consumed. The fast food restaurant may include a drive-thru window and may allow consumption of foods, frozen desserts, or beverages within a motor vehicle parked upon the premises, at other facilities on the premises outside the restaurant building or at ancillary seating areas provided within the restaurant building. Fast food restaurants may include but are not limited to the following:

- Bakeries
- Ice cream parlors
- Coffee and juice shops
- Pizza parlors
- Sandwich shops
- Delicatessens

18.04.382.9 Restaurant, sit-down.

An establishment whose principal business is the sale of foods, desserts, or beverages to the customer in a ready-to-consume state, and whose design or principal method of operation includes one or both-of the following characteristics:

- A. Customers, normally provided with an individual menu, are served their food, desserts, or beverages on reusable tableware by a restaurant employee at the same table or counter at which said items are consumed.

- B. A cafeteria-type operation where food, desserts, or beverages generally are consumed within the restaurant building.

A facility shall be classified as a sit-down restaurant only if it receives at least 50% of its gross revenues from serving food. A sit-down restaurant may include a bar serving alcoholic beverages and may have a "take-out" component which does not include a drive through component (unless a conditional use permit has been obtained), provided that the restaurant's on-site food sales account for more than 50% of its gross revenues.

18.04.383 Retail, extensive.

Retail uses where more than 75% of the gross floor area is used for display, sales, and related storage of bulky commodities, and which demonstrably generate a demand for fewer parking spaces than do "less extensive retail uses." Extensive retail uses include the following:

- Carpeting and floor covering.
- Catalog and mail order sales.
- Catering and party rentals.
- Construction equipment and machinery.
- Garden and farm equipment.
- Heating, ventilating, air conditioning, and other mechanical equipment and supplies.
- Kitchen, bathroom and plumbing appliances, equipment and supplies.
- Lumber and building materials.
- Office furniture, equipment and machinery, including computers.
- Household furniture.

18.04.384 Retail, intensive.

"Intensive retail" means any retail use that is not extensive. (Amended during 8/93 supplement; Ord. 1025 N.S. § 2 (part), 1991)

18.04.385 Sales, wholesale.

"Wholesale sales" means the sale of goods for resale, or the sale of goods produced or processed from raw or primary materials on the premises, or the sale of construction materials which require bulk delivery of the product. (Ord. 559 N.S. § A (part), 1981)

18.04.390 Salvage yard.

"Salvage yard" means a place where waste, discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled, or handled or stored, including auto wrecking yards, house wrecking yards, used-lumber yards and places or yards for storage of salvaged house-wrecking and structural steel materials and equipment; but not including such places where such uses are conducted entirely within a completely enclosed building, and not including pawnshops and establishments for the sale, purchase or storage of used furniture and household equipment, used cars in operable condition, or salvaged materials incidental to manufacturing operations. (Ord. 559 N.S. § A (part), 1981)

18.04.391 School, business, trade, or tutoring.

A specialized instructional establishment that provides on-site training of business, commercial, and/or trade skills or on-site tutoring. Includes specialized schools offering instruction in the following:

- Business, secretarial, and vocational schools
- Computers and electronics training schools
- Courses by mail
- Driver education schools
- Firearms training center
- Language schools
- Trade schools
- Tutoring centers

18.04.393 Senior citizen housing.

"Senior citizen housing" means a dwelling unit which is designed for, and limited to the occupancy by persons who are of sixty-two years of age or older. (Ord. 899 N.S. § 1 (part), 1989)

18.04.394 Sensitive areas or sensitive uses.

"Sensitive areas" or "sensitive uses" shall mean and include any of the following, for which proximity to an "adult business" can cause diminished real estate values, urban blight and other adverse secondary effects:

1. Any religious institution, on land leased or owned by any church, synagogue, mosque, temple or any school or meeting hall operated by such institution.
2. Any public or private elementary, junior high or high school, preschool or child day care center.
3. Any public park on which recreation games may be played, including lawn and parking areas, but excluding natural open space on slopes exceeding twenty percent.
4. Any public assembly or public use civic building, including City Hall, the Library and the Post Office, but excluding police and fire stations.
5. Any area developed with or shown on the General Plan for future residential development.
6. Any hospital except a veterinary hospital.
7. Any Freeway or arterial street which is identified in the General Plan Circulation Element, and which residential and visitor traffic uses to access other "Sensitive Uses". (Ord 1150 § 2 (part), 1993)

18.04.395 Setback.

"Setback" means the distance between the building and any lot line. (Ord. 1473 N.S. § 5, 2000)

18.04.396 Setback Line.

"Setback Line" means that line which defines the minimum required distance from any lot line, within which a must be placed. (Ord. 1473 N.S. § 6, 2000)

18.04.399 Site, building.

"Building site" means the ground area of a building or buildings, together with all open spaces required by Division I of this title. (Ord. 1473 N.S. § 4, 2000; Ord. 559 N.S. § A (part), 1981)

18.04.400 Special residential care facilities.

"Special residential care facilities" means any state-authorized, certified or licensed family-care home, foster home, or group home serving six or fewer mentally disordered or otherwise handicapped persons, or dependent and neglected children or the elderly, when such homes provide care on a twenty-four-hour a day basis. (Ord. 559 N.S. § A (part), 1981)

18.04.401 Specified anatomical areas.

"Specified anatomical areas" shall mean and include any of the following:

1. Less than completely and opaquely covered human genitals, pubic region, anus or female breasts below a point immediately above the top of the areolae; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered. (Ord. 1150 N.S. § 2 (part), 1993)

18.04.402 Specified criminal acts.

"Specified criminal acts" shall mean conviction of an act or acts which are sexual crimes against children, sexual abuse, or rape; as well as crimes connected with an adult business including, but not limited to, sexual assault, distribution of obscenity or material harmful to minors, prostitution, solicitation of prostitutes, pimping or pandering, unlawful acts of sexual intercourse, sodomy, oral copulation or masturbation occurring on the premises of the "adult business". Indictment or accusation does not constitute a "specified criminal act." (Ord. 1150 N.S. § 2 (part), 1993)

18.04.403 Specified Sexual Activities.

"Specified Sexual Activities" shall mean and include any of the following:

1. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts; or
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy; or
3. Masturbation, actual or simulated; or
4. Human genitals in a state of sexual stimulation, arousal or tumescence;

5. Excretory functions as part of or in connection with any of the activities set forth in this Section. (Ord 1150 § 2 (part), 1993)

18.04.405 Stable.

"Stable" means a building or portion thereof, or other enclosure, not including pastures, used to confine, feed, exercise, show or provide shelter for horses, cows or other hoofed animals, whether for private, public or commercial use. "Stable" includes, but is not limited to, stall, corral, paddock, barn, exercise area and arena, along with structures accessory thereto. (Ord. 559 N.S. § A (part), 1981)

18.04.410 Standard industrial classification manual (SIC).

"Standard industrial classification manual (SIC)" means the latest publication prepared by the Statistical Policy Division, Office of Management and Budget, Executive Office of the President of the U.S., and available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. As used in Division I of this title, the SIC shall constitute the detailed descriptions of uses enumerated in the various use districts, except where such uses are otherwise defined in Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.415 Story.

"Story" means that portion of a building included between the surface of any floor and the surface of the floor next above it, or, if there is no floor above it, then the space between the floor and the ceiling next above it. (Ord. 559 N.S. § A (part), 1981)

18.04.420 Street frontage.

"Street frontage" means:

- A. The existence of a street lot line; or
- B. The lineal foot measurement of a lot at a street lot line. (Ord. 559 N.S. § A (part), 1981)

18.04.425 Structure.

"Structure" means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner, except benches, statuary, planter boxes less than thirty-six inches in height, fish ponds less than eighteen inches in depth, and wood fences seventy-two inches or under in height. (Ord. 559 N.S. § A (part), 1981)

18.04.427 Theater

1. A motion picture theater where films, motion pictures, video, slides or similar photographic reproductions are regularly shown for any form of consideration: not including adult businesses ("Adult Business") or
2. An establishment regularly featuring live performance of dramatic productions for any form of consideration, not including adult businesses ("Adult Business")

18.04.430 Tract office, temporary.

"Temporary tract office" means an office facility used on a temporary basis only, located on or immediately adjacent to a tract or subdivision with new development thereon, for sales and administrative activity associated with the development. (Ord. 559 N.S. § A (part), 1981)

18.04.435 Townhouse.

"Townhouse" means a dwelling unit which is a portion of a multiple dwelling and has one or more common walls with other dwelling units, where such unit is the sole dwelling unit on a separate lot, and where ownership of such dwelling unit includes an interest in common areas other than the lot upon which the dwelling unit is situated. (Ord. 559 N.S. § A (part), 1981)

18.04.437 Transportation terminal.

"Transportation terminal" means a depot, terminal, or transfer facility for passenger transportation services. (Ord. 899 N.S. § 1 (part), 1989)

18.04.439 Travel trailer or recreational vehicle.

"Travel trailer" or "recreational vehicle" or "coach" shall have the same definition as in Sections 18010 and 18215.5 of the California Health and Safety Code, except that all recreational vehicles or travel trailers parked for more than thirty days in a park in Morgan Hill shall have a tag of certification as described in Sections 4030 and 4032 of Title 25, Division 1, Chapter 3 of the California Code of Regulations. Such vehicles exclude home-made or nonstandard travel trailers or recreational vehicles and specifically exclude camper shells or other removable sections of pickup trucks. Such vehicles so excluded from stays of over thirty days are not excluded from stays of thirty days or less at recreational vehicle short term occupancy spaces in Morgan Hill. A "travel trailer" is not a "residential development," except where a stay exceeds two hundred forty-four days, in any consecutive three hundred sixty-five day period, in any recreational vehicle park or other lawful location. (Ord. 1233 N.S. § 8, 1995; Ord 1100 N.S. § 1 (part), 1992)

18.04.440 Use, allowed.

"Allowed use" means a use that is either permitted or conditional within a zoning district. (Ord. 559 N.S. § A (part), 1981)

18.04.445 Use, permitted.

"Permitted use" means a use for which no conditional use permit is required, but which may be subject to other approval proceedings as specified in this chapter. (Ord. 559 N.S. § A (part), 1981)

18.04.447 Vehicle space.

"Vehicle space" means any portion of a park which may be leased or subject to a subdivision map, sold to any person with the intent of occupancy by a recreational vehicle or travel trailer. If the intent to occupy or actual occupancy of the space exceeds the limits of Section 18.04.383, the vehicle space shall be defined as a "residential development" under Section 18.78.020 of the municipal code, and shall only have such long-term occupancy if an allocation is granted under Section 18.78.010 et seq. of the Municipal Code. (Ord. 1100 N.S. § 1 (part), 1992)

18.04.448 Warehousing and distribution.

"Warehousing and distribution" means a use engaged in storage, wholesale and distribution of manufactured products, supplies, and equipment, but excluding bulk storage of materials which are flammable or explosive or which create hazardous or commonly recognized offensive conditions. (Ord. 1415 N.S. § 35, 1998; Ord. 899 N.S. § 1 (part), 1989)

18.04.450 Yard, front.

"Front yard" means an open space extending the full width of the lot, between a building and the front lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.455 Yard, front, least depth.

"Front yard least depth" means the shortest distance, measured horizontally, between any part of a building, other than such parts hereinafter excepted, and the front lot line. Such depth shall be measured from the right-of-way line of the existing street on which the lot fronts (the front lot line); provided, however, that if the proposed location of the right-of-way line of such street, as adopted by the city, differs from that of the existing street, then the required front yard least depth shall be measured from the right-of-way line of such street as adopted, or shall be measured from any officially adopted setback lines. (Ord. 559 N.S. § A (part), 1981)

18.04.460 Yard, rear.

"Rear yard" means an open space between a building and a rear lot line, extending the full width of the lot (except for any portion thereof which overlaps a street side yard), unoccupied and unobstructed from the ground upward, except as specified elsewhere in Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.465 Yard, rear, least depth.

"Rear yard least depth" means the shortest distance, measured horizontally, between any part of a building, other than such parts hereinafter excepted, and the rear lot line. (Ord. 559 N.S. § A (part), 1981)

18.04.470 Yard, side.

"Side yard" means an open space extending from the front yard to the rear yard between a building and the nearest side lot line, unoccupied and unobstructed from the ground upward, except as specified elsewhere in Division I of this title. (Ord. 559 N.S. § A (part), 1981)

18.04.475 Yard, side, least width.

"Side yard least width" means the shortest distance, measured horizontally, between any part of a building, other than such parts hereinafter excepted, and the nearest side lot line. Such width shall be measured from the nearest side lot line and, in case the nearest side lot line is a side street lot line, from the right-of-way line of the existing street; provided, however, that if the officially adopted location of the right-of-way line of such street differs from that of the existing street, then the required side yard least width shall be measured from the right-of-way of such street as adopted. (Ord. 559 N.S. § A (part), 1981)

RESOLUTION NO. 06

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF A TEXT AMENDMENT REPEALING
AND REPLACING SECTION 18.48 COMMERCIAL AND
INDUSTRIAL PERFORMANCE STANDARDS WITH
SECTION 18.48 PERFORMANCE STANDARDS.**

WHEREAS, such request was considered by the Planning Commission at their regular meeting of October 10, 2006, at which time the Planning Commission recommended approval of application ZA-06-12: City of Morgan Hill – Exceptions and Modifications Zoning Text Amendments; and

WHEREAS, the incorporation of performance standards found in Chapter 18.56 into Chapter 18.48 and the renaming of the chapter from Commercial and Industrial Performance Standards to “Performance Standards” will allow for a zoning text have a single section to define performance standards for all zoning districts; and,

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. The Planning Commission hereby recommends repeal of Section 18.48 Commercial and Industrial Performance Standards and the adoption of Section 18.48 Performance Standards into the Morgan Hill Municipal Code. All text amendments are recommended to be made as shown in attached Exhibit A.

**PASSED AND ADOPTED THIS 10th DAY OF OCTOBER 2006, AT A REGULAR
MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ATTEST:**

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J BENICH, Chair

CHAPTER 18.48

COMMERCIAL AND INDUSTRIAL PERFORMANCE STANDARDS

Sections:

- 18.48.000 *Applicability and* purpose of provisions.
- 18.48.005 Specific conditions and substances prohibited.
- 18.48.010 Standards applicable generally.
- 18.48.015 Adult businesses, police permits.
- 18.48.020 Adult businesses, locational regulations.
- 18.48.025 Air pollution.
- 18.48.030 *Clear triangle.***
- 18.48.035 Convenience markets.
- 18.48.040 Fire and explosive hazards.
- 18.48.045 Glare.
- 18.48.050 Hazardous wastes.
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- 18.48.110 Smoke.
- 18.48.115 *Storage on lots***
- 18.48.120 *Storage, outdoor.***
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- 18.48.130 Traffic in excess of carrying capacity.
- 18.48.135 Trash containers.
- 18.48.140 Vibration.

18.48.000 *Applicability and* purpose of provisions.

The performance standards established in this chapter apply in all zoning districts, and are intended to assure that all *uses* carried out in the city are conducted in such a manner so as to avoid any nuisance, hazard or commonly recognized offensive condition or characteristic adverse to the public health, safety and general welfare. (Ord. 559 N.S. § A (part), 1981)

18.48.005 Specific conditions and substances prohibited.

No land or building shall be used or occupied in any manner so as to create any:

- A. Dangerous, injurious, noxious or otherwise objectionable fire, explosive or other hazard;
- B. Noise or vibration, smoke, dust, odor or other form of air pollution;
- C. Heat, cold, dampness, electrical, or other disturbance;
- D. Glare;
- E. Liquid or solid refuse or wastes; or
- F. Other substance, condition or element in such a manner or in such amount as to adversely affect the surrounding area or adjoining premises. (Ord. 559 N.S. § A (part), 1981)

18.48.010 Standards applicable generally.

The following performance standards set out in Sections 18.48.030 through 18.48.130 shall apply to all uses of property in the commercial and industrial zoning districts specified in Section 18.48.010 *Division I of this title*. (Ord. 559 N.S. § A (part), 1981)

18.48.015 Adult businesses locational regulations.

No person shall cause or permit the establishment or continuation of an "adult business" within five hundred feet, as measured in the shortest linear distance on a city zoning map, of a "sensitive use" or "sensitive area" as defined by this title, and from any other "adult business". The establishment of a "sensitive area" or "sensitive use" within five hundred feet of an "adult business" after the lawful establishment of such "adult business" under this chapter shall not, by itself, create a requirement for such "adult business" to relocate more than five hundred feet from such "sensitive area" or "sensitive use". (Ord. 1150 N.S., § 3 (E), 1993)

18.48.020 Adult businesses, required police permits.

No person shall cause or permit the establishment or continuation of an "adult business" unless such "adult business" shall first receive and maintain in good standing a "police permit" pursuant to Section 5.60.010 et seq. of the Municipal Code. Where a "police permit" has been denied or revoked by the city, either initially or after appeal to the city council, such "adult business" shall cease and desist operations within forty-eight hours of such final city action. (Ord. 1150 N.S. § III F, 1993)

18.48.025 Air pollution.

All uses shall conform with standards established by the San Francisco Bay Area Air Quality Maintenance District adopted herein by reference. (Ord. 559 N.S. § A (part), 1981)

18.48.030 Clear triangle.

A clear triangle (see definition section for illustration) shall be required on corner lots in which nothing shall be erected, placed, planted or allowed to grow exceeding three feet in height. Such area shall consist of a triangular area bounded by the street right-of-way lines of such corner lots and a line joining points along said street lines twenty feet from the point of intersection.

18.48.035 Convenience markets.

The purpose of the following provisions are to ensure the compatibility of convenience markets with neighboring commercial and residential land uses with respect to potential negative impacts; and to maximize crime prevention for new proposed convenience markets by encouraging and promoting employee safety and minimization of other related effects of crime upon the community.

A. Separation Distances between Convenience Markets. No convenience market approved under the provisions of this chapter shall be located less than one thousand feet from an existing or approved convenience market, as measured in straight-line distance between the exterior walls of the market structures. The following exception to the 1000 ft. separation requirement may be approved:

1. One convenience market (regardless of size) may be allowed per quadrant of the interchange of Highway 101 and Dunne Ave., Tennant Ave., and Cochrane Rd.
2. Convenience markets which contain 300 sq. ft. or less of area devoted to sales and display.

B. Separation Distance from Schools. No convenience market approved under the provisions of this chapter shall be located less than one thousand feet from the boundary of an existing school, or proposed school site as designated by the school district's board of education.

C. Requirements for Restrooms and Automotive Services. Convenience markets which also dispense automotive fuels for retail sale shall provide the following additional services without charge:

1. One restroom for women and one restroom for men. Said restrooms shall be provided and continuously be maintained for the use by customers and employees. If restroom entrances open directly to the outside of the building, the restroom entrances shall be screened from public view.
2. Hoses conveying air and water for the service of automotive vehicles. Said hoses and associated machinery shall be continuously maintained in an accessible location as approved by the planning division.

D. Loiter Control.

1. Public pay telephones provided on the exterior of the building or anywhere on the site of the convenience market shall not allow for incoming calls. Public telephones with incoming call ability may be allowed interior to the building.
2. No video games may be installed or operational on the premises of the convenience market.

3. Any other measures as recommended and approved through the Conditional Use Permit process by the Police Department to control loitering.

E. Crime Prevention Measures.

1. The exterior of the premises, including adjacent public sidewalks and all parking, thoroughways and alleys under the control of the owner/operator of the convenience market shall be illuminated during all hours of darkness during which the premises are open for business in a manner so that persons standing in those areas at night are identifiable by law enforcement personnel. However, said illumination shall be placed so as to minimize interference with the quiet enjoyment of nearby residents of their property.

2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the Police Department as recommended and approved through the Conditional Use Permit process.

3. Any other crime related measures as recommended and approved through the Conditional Use Permit process by the Police Department which are intended to increase employee and customer safety and mitigate the costs to the city-provided services for the proposed convenience market.

4. Persons under the age of 18 who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person 21 years of age or older.

F. Concurrent Sale of Alcoholic Beverages and Automotive Fuels. If concurrent sale of alcoholic beverages and automotive fuels are proposed in conjunction with the convenience market use, the following additional requirements shall apply as specified in Section 23790.5 of the Business and Professions Code as it exists or it may be amended:

1. No alcoholic beverages shall be displayed within ten feet of the cash register or front door unless located within a permanently affixed cooler.

2. No display or sale of alcoholic beverages shall be made from an ice tub.

3. No alcoholic beverage advertising shall be located on fuel pump islands and no advertising for alcoholic beverages shall be located on buildings or windows.

4. Employees on duty between the hours of 10 p.m. and 2 a.m. who sell beer or wine shall be at least 21 years of age. (Ord. 1307 N.S. § 9, 1996)

18.48.040 Fire and explosive hazards.

All activities involving storage of flammable or explosive materials shall provide adequate safety devices against the hazard of fire and explosion and adequate fire-fighting and fire-suppression equipment, standard in the industry. Burning of waste materials in open fires is prohibited. (Ord. 559 N.S. § A (part), 1981)

18.48.045 Glare.

No direct or sky-reflected glare, whether from floodlights or from high-temperature processes such as combustion or welding or otherwise, shall emanate from any establishment or use so as to be visible at a distance of five hundred feet from such establishment or use. This restriction shall not apply to signs otherwise permitted by the provisions of Chapter 18.76 of this title. (Ord. 559 N.S. § A (part), 1981)

18.48.0050 Hazardous wastes.

Hazardous materials reprocessing as defined by Section 18.04.218 herein shall be performed only with a conditional use permit and approval consistent with the policies and guidelines contained in the Santa Clara County hazardous waste management plan or a city-designated equivalent. (Ord. 1215 N.S. § 40, 1995; Ord. 1104 N.S. § 1 (Exh. A)(part), 1992)

18.48.055 Home occupations.

A. A zoning permit shall be required for all home occupations. Prior to issuance of any zoning permit for a home occupation, the following criteria shall be used by the community development department in evaluating the application:

1. The use is clearly incidental and secondary to the use of the dwelling for residential purposes;
2. That portion of the use conducted in the dwelling unit shall be carried on solely by the resident thereof;
3. All uses shall be conducted only in one room of the dwelling or garage. In no case shall the home occupation occupy more than one-fourth of the floor area on one floor of the building;
4. Materials used in home occupations shall be stored only in the room used for the home occupation, or in that area of the garage not required for parking;
5. The use shall not entail the use or storage of explosive, flammable or otherwise hazardous materials;
6. The mechanical or electrical equipment used in connection with the home occupation shall not require an electrical motor exceeding fifteen amperes at one hundred ten volts, or the equivalent thereof, and not be operated in such a manner as to disturb the peace, quiet and comfort of neighboring residents or any reasonable person of normal sensitivity residing in the area;
7. The appearance of the dwelling shall not be altered, nor shall the home occupation be conducted in such a manner that it may be reasonably recognized as serving a nonresidential use, either by color, materials, construction, lighting, signs, sounds or vibrations;
8. No signs or displays shall be used to identify the home occupation;
9. The use shall not attract more than ten vehicles per day.

B. A zoning permit issued for a home occupation is not transferable.

C. The following uses are expressly prohibited:

1. Repair or construction of motor vehicles and large appliances;
2. Massage parlors, dating services, photo schools and dance studios.

18.48.060 Liquid or solid wastes.

A. Discharge of Waste Materials into Ground. No discharge at any point into any public sewer, private sewage disposal system, or stream, or into the ground, of any materials of such nature or temperature as can contaminate any water supply, interfere with bacterial processes in sewage treatment, or otherwise cause the emission of danger-

ous or offensive elements, shall be permitted, except in accord with standards approved by the California Department of Public Health or the Central Coast Water Quality Control Board.

B. Waste Accumulation Aboveground. It is the intent because of the public nuisance created by accumulations of trash enclosures that, whenever such a condition is found to exist on properties subject to the requirements of Section 18.48.160, that compliance with the requirements of that section shall be required. (Ord. 941 N.S. § 6, 1989; Ord. 559 N.S. § A (part), 1981)

18.48.065 Mini-storage facilities.

All mini-storage development shall have adequate on-site supervision as determined by the staff. All mini-storage development shall provide controlled access through the use of a security gate that is operated by a passcard or punch card system, or by a manager. Caretakers units may be conditionally allowed with the approval of a use permit.

No mini-storage facility shall have an individual storage unit that exceeds six hundred square feet in area. Storage shall be limited to "dead goods" only. Outdoor storage of vehicles including cars, boats, motor homes, travel trailers, motorcycles, all-terrain and off-road vehicles is allowed in designated areas only. Designated areas shall be adequately screened from public view, shall be fenced and secured under lock and key. The servicing of equipment or vehicles and the operating of power tools shall be prohibited. The use of a mini-storage facility for flea markets, commercial storage, transfer business, auctions or sales of any type shall be prohibited with the exception of on-site auction of unclaimed or confiscated goods from on-site storage lockers no more than three (3) times per year, per facility. (Ord. 1186 N.S. § 4, 1994; Ord. 1055 N.S. § C (part), 1991; Ord. 839 N.S. § 3, 1987)

18.48.0070 Motor vehicle repair

All minor and major motor vehicle repair operations shall store all inoperative vehicles, machinery, parts, materials or products within a building or within an enclosed area concealed from the public view or view from adjacent properties by an opaque screen material. (Ord. 1135 § 54, 1993)

18.48.075 Noise.

A. At the lot line of all uses specified in Section 18.48.010, the maximum sound generated by any use shall not exceed seventy to seventy-five db(A) when adjacent uses are industrial or wholesale uses. When adjacent to offices, retail or sensitive industries, the sound level shall be limited to sixty-five to seventy db(A). When uses are adjacent or contiguous to residential, park or institutional uses, the maximum sound level shall not exceed sixty db(A).

B. Excluded from these standards are occasional sounds generated by the movement of railroad equipment, temporary construction activities, or warning devices. (Ord. 559 N.S. § A (part), 1981)

18.48.080 Odors.

No emission shall be permitted of odorous gases or other odorous matter in such quantities as to be readily detectable when diluted in the ratio of one volume of odorous air to four volumes of clean air at the lot line of the establishment or use. There is established as a guide in determining such quantities of offensive odors, Table III, Odor Thresholds, in Chapter 5, Air Pollution Abatement Manual, copyrighted in 1951 by Manufacturing Chemists' Association, Inc. (Ord. 559 N.S. § A (part), 1981)

18.48.085 Outdoor sales and display.

Areas used for outdoor sales and display shall meet the minimum design standards applicable to off-street parking facilities with respect to paving, setbacks, grading, drainage, access to public streets, safety and protective features, lighting, landscaping, screening and the sign ordinance (See Chapter 18.76). (Ord. 1055 N.S. § C (part), 1991)

18.48.090 Radioactive or electrical disturbances.

No activities shall be permitted which utilize fissionable or radioactive materials, if their use results at any time in the release or emission of any fissionable or radioactive material into the atmosphere, the ground, or sewerage systems; and no activities shall be permitted which emit electrical disturbance affecting the operation of any equipment other than that of the creator of such disturbance. (Ord. 559 N.S. § A (part), 1981)

18.47.095 Restricting vehicle parking in front yard of residential use district.

No person shall park or store any automobile or other motor vehicle, including but not limited to motorcycles, in any front yard in any residential district or those portions of a PUD district devoted to residential uses. Parking shall be permitted in and upon an improved or paved driveway in said front yard area if each vehicle is currently licensed and operative. (Ord. 899 N.S. § 24 (part), 1989)

18.48.100 Security provisions applicable.

All provisions of the Commercial Security Ordinance shall be required conditions of ~~all commercial and industrial~~ development within the city. (Ord. 559 N.S. § A (part), 1981)

18.48.105 Smoke.

No emission shall be permitted at any point, from any chimney or otherwise, of visible gray smoke of a shade equal to or darker than No. 2 on the Power's Micro Ringelmann Chart, published by McGraw-Hill Publishing Company, Inc., and copyrighted in 1954, except that visible gray smoke of a shade equal to No. 3 on such chart may be emitted for four minutes in any thirty-minute period. (Ord. 559 N.S. § A (part), 1981)

18.48.110 Storage of construction equipment on lots. prohibited in all districts except service commercial and industrial.

No person shall store any commercial or construction equipment or materials or *store or park any boat, house trailer, camper-trailer, detached camper-trailer top, motor vehicle or dismantled motor vehicle* on any *vacant or* occupied lot or parcel in any zoning district of the city except in the service commercial or industrial districts *consistent with the base zoning district requirements*. Equipment or materials being used for construction on the premises where a valid building permit has been issued or applied for may be stored thereon during construction. (Ord. 899 N.S. § 24 (part), 1989)

18.48.115 Storage, outdoor.

Outdoor Storage in Commercial and Industrial Areas. Outdoor storage buildings, containers and enclosures in commercial and industrial zoning districts are permitted only when screened from view of any public right-of-way, are less than three hundred square feet, and located in rear or side yard areas. Location of storage buildings, enclosures, containers, etc., shall not interfere with or remove existing required parking and shall not be used for any purpose other than storage. Location and screening of storage containers must be approved by the community development department prior to placement on any industrial or commercial property. (Ord. 1055 N.S. § C (part), 1991)

18.47.118 Storage on vacant lots.

No person shall store any commercial or construction equipment or materials or *store or park any boat, house trailer, camper trailer, detached camper-trailer top, motor vehicle or dismantled motor vehicle* on vacant lots or occupied parcels in any residential zoning district of the city.

18.47.120 Storage in yards.

A. **Front Yard Storage Prohibited.** No person shall store any boat, house trailer, camper, mobile home, trailer, detached camper-trailer top, dismantled vehicle or any other similar type vehicle in the front yard of any residential district, which shall include those portions of a PUD (Planned Unit Development) district devoted to residential uses.

B. **Side and Rear Yard Storage Restricted.** No person shall park or store any vehicle, boat or trailer in the side yard or rear yard area of a corner lot or reversed corner lot of any residential district and also those portions of a PUD district devoted to residential uses unless said vehicle, boat or trailer is screened from view from public rights-of-way and such vehicle, boat or trailer is setback at least as far as the required front yard setback on the adjacent interior lot. (Ord. 1215 N.S. § 59, 1995; Ord. 899 N.S. § 24 (part), 1989)

18.47.112 Special residential care facilities.

A. ~~Special residential care facilities, as defined in Chapter 18.04 of this title, shall require zoning permit approval by the community development director. The director may require, as a reasonable condition to zoning permit approval, that the facility be located farther than three hundred feet from the nearest similar facility, up to a distance of one mile.~~

~~B. A zoning permit for special residential care facilities may be revoked at any time by the city council, following public hearing, provided that the council finds:~~

~~1. The facility is located within three hundred feet, measured from property boundary line to property boundary line, of another existing community care facility for wards of the juvenile court; and~~

~~2. The presence of the facility at its present location has resulted in the surrounding neighborhood having to sustain a disproportionate and unreasonable level of vandalism, violence, or other acts of disruption. (Ord. 559 N.S. § A (part), 1981)~~

18.48.125 Traffic in excess of carrying capacity.

No use shall generate vehicular traffic which would cause an adjacent arterial or collector road to exceed a traffic-carrying capacity of a Level of Service D in areas at least 50 percent developed without providing appropriate mitigation measures in the form of traffic-control devices, restrictions on hours of operation, or staggered work hours. A level of service "C" standard shall apply as the design criteria for roadway improvements that serve predominately new development. Traffic-generating potential shall be determined by use of Caltrans trip-generation studies or other information acceptable to the director of public works. (Ord 1415 N.S. § 28, 1998; Ord. 559 N.S. § A (part), 1981)

18.48.130 Trash containers.

A. All land and buildings shall be serviced by and provided with an adequate number of trash receptacles and trash enclosures to meet the needs of the users and occupants of the property.

B. If, because of a change of occupancy or a change in the nature or size of a use, the existing trash receptacles are inadequate in number to serve the property users and occupant's needs, additional receptacles and enclosures shall be provided. Based on observation or complaint, the Community Development Director may determine that the number of receptacles or frequency of pick is inadequate. The Community Development Director shall notify the property owner of the City's intent to require additional trash enclosures or receptacles or to increase the frequency of trash collection. The Community Development Directors decision to take such action may be appealed by as necessary after the property owner to the Planning Commission.

~~A. Trash receptacles and enclosures as described in Section 18.74.505 shall be required upon a finding by the community development director that properties subject to these requirements require additional receptacles and enclosures.~~

C. Where additional trash receptacles and enclosures cannot be provided due to limited on-site parking or landscaping area, the property owner shall be required to

increase the frequency of trash collection. (Ord. 1111 N.S. § 26, 1992; Ord. 941 N.S. § 4, 1989)

18.48.135 Vibration.

No vibration shall be permitted which is discernible without instruments at the lot line of the establishment or use. (Ord. 559 N.S. § A (part), 1981)

RESOLUTION NO. 06

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF A TEXT AMENDMENT REPEALING
AND REPLACING SECTION 18.56 EXCEPTIONS &
MODIFICATIONS WITH SECTION 18.56 ACCESSORY
STRUCTURES.**

WHEREAS, such request was considered by the Planning Commission at their regular meeting of October 10, 2006, at which time the Planning Commission recommended approval of application ZA-06-12: City of Morgan Hill – Exceptions and Modifications Zoning Text Amendments; and

WHEREAS, the replacement of Section 18.56 Exceptions and Modification with a zoning text Section 18.56 titled Accessory Structures will allow for a zoning text section to exclusively define standards for accessory structures and other yard area improvement; and,

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. The Planning Commission hereby recommends the repeal of Section 18.56, Exceptions and Modifications and the adoption of Section 18.56 Accessory Structures into the Morgan Hill Municipal Code. All text amendments are recommended to be made as shown in attached Exhibit A.

**PASSED AND ADOPTED THIS 10th DAY OF OCTOBER 2006, AT A REGULAR
MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ATTEST:**

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J BENICH, Chair

Chapter 18.56**ACCESSORY STRUCTURES****18.56.000 Purpose****18.56.010 Accessory structures in side or rear yards****18.56.020 Equipment placement in side or rear yards****18.56.030 Patios and decks****18.56.040 Pools, spas & hot tubs****18.56.050 Ponds****18.56.060 Fireplaces, barbeques structures, statuary and fountains****18.56.070 Fences****18.56.080 Satellite dishes and solar equipment****18.56.000 Purpose**

The purpose of this chapter is to provide development perimeters for accessory uses and structures. These provisions are intended to promote and encourage the proper placement, height and size limitations on accessory uses and structures as to avoid any nuisance, hazard or commonly recognized offensive condition or characteristic adverse to the public health, safety and general welfare.

For the purposes of this chapter, an accessory use or structure means a use or structure subordinate to or part of the principal use on the same lot, and serving a purpose customarily incidental to the principal use. An accessory use or structure does not alter the principal use and does not serve parcels other than the parcel where the principal use is located. Guest houses, caretakers units, secondary dwelling units and pool houses with living space as defined by the Building Code are not considered accessory structures and must meet the requirements of Chapter 18.55.

18.56.010 Accessory structures in side or rear yards.

- A. Accessory structures 7 ft. or less in height and 120 sq. ft. or less in size are exempt from the provisions of this title.
- B. The following development standards shall apply to all accessory structures greater than 7 ft. in height, greater than 120 sq. ft. in size which have some form of roof element (open or solid) and are constructed within or partially within, the required side and rear yard areas. Examples include a detached garage, carport, shed, trellises, arbors, shade structures, play structures, covered dog enclosures and gazebos.
 - 1. Maximum Coverage: Accessory structures in aggregate shall not exceed thirty percent of the area of the minimum required side or rear yards.
 - 2. Height: The maximum overall height for any accessory structure is 12 ft. Structure height is measured vertically from the lowest point of the natural grade at the base of the structure to the highest point at top.

3. Setback: Setback is measured from the base to any property line.
 - a. Accessory structures with a height of greater than 7ft. to a maximum of 12ft. shall be setback a minimum of 5ft. from property line.
 - b. Accessory structures with a height greater than 12ft. shall be constructed entirely within the building envelope.
 - c. Accessory structures with a solid roof element and walls on one or more sides shall be setback 5 ft. from the principle structures. The separation may be covered by a breeze way or similar passage.
4. Limitations: Accessory structures cannot be used as living space as defined by the Building Code and may be equipped with a half bath only.

Note: Guest houses, caretakers units, secondary dwelling units and pool houses with living space as defined by the Building Code are not defined as accessory structures and must meet the requirements of Chapter 18.55.

18.56.020 Equipment placement in side or rear yards.

Equipment or structures enclosing such equipment which are attached to the main building or accessory structure (e.g., solar panels and water storage tanks, heating, and air conditioning equipment, or similar mechanical equipment), shall not encroach more than fifty percent into a rear or side yard area. The fifty percent encroachment limitation can be waived if all other applicable code requirements can be met and the encroachment would not adversely affect the adjoining property. The Community Development Director shall approve of any encroachment prior to the issuance of a permit.

18.56.030 Patios, decks and balconies.

A. Side and Rear Yards: The following development standards shall apply to all patios, decks and balcony structures within the required side and rear yard areas:

1. Maximum Coverage: Decks and balconies greater than 18 inches above grade shall not in aggregate with other accessory structures exceed thirty percent of the area of the required minimum side and rear yards.
2. Height: The maximum overall height for any deck or balcony structure within the required side and rear yard area is 12 ft. Structure height is measured at the point closest to the property line vertically from the base of the structure to the highest point at top (including railing height, trellis or similar roof feature).
3. Setback: Setback is measured from the farthest projecting point to any side or rear property line.
 - a. Patios and decks constructed at 0 to 18 inches above grade may be located in any rear or side yard area to within 1 ft. of the rear or side property lines.

- b. Deck structures with a height of 6ft. or less shall be setback a minimum of 5ft. from rear or side property lines.
- c. Deck or balcony structures with a height of greater than 6ft. to a maximum of 12ft. shall be setback a minimum 12.5ft. from the side and rear property line.
- d. Deck structures with a height greater than 12ft. shall be constructed entirely within the building envelope.

B. Front Yards: The following development standards shall apply to all patios, decks and balcony structures within the required front yard area:

1. Maximum Coverage: Decks and balconies greater than 18 inches above grade shall not in aggregate with other accessory structures exceed thirty percent of the area of the required minimum front yard.
2. Height: The maximum overall height for any deck or balcony structure within the required front yard area is 12 ft. Structure height is measured at the point closest to the property line vertically from the base of the structure to the highest point at top (including railing height, trellis or similar roof feature).
3. Setback: Setback is measured from the farthest projecting point to any side or front property line.
 - a. Patios and decks constructed at 0 to 18 inches above grade may be located in any front yard area to within 1 ft. of the side and 5 ft. from the front property line.
 - b. Deck structures with a height of 6ft. or less shall be setback a minimum of 5 ft. from the side property line and 15ft. from the front property line.
 - c. Deck or balcony structures with a height of greater than 6ft. to a maximum of 12ft. shall be setback a minimum 20 ft. from the front property line and 12.5 ft from the side property line.
 - d. Deck structures and balcony structures with a height greater than 12ft. shall be constructed entirely within the building envelope.

18.56.040 Pools, spas & hot tubs.

- A. Swimming pools, spas and hot tubs are allowed outside of the required front yard setback and in the rear or side yard areas.
- B. In ground swimming pools, spas and hot tubs shall be a minimum of 4 ft from any property line.
- C. Above ground pools, spas and hot tubs shall be setback a minimum of 5 feet from any property line.
- D. Pool, spa and hot tub equipment shall be setback a minimum of 5 ft from any property line.

- E. Pool or hot tub accessories or associated improvements such as slides and waterfalls shall be a maximum of 8 ft. in height and setback a minimum of 5 ft. from any property line.

18.56.050 Ponds

In ground ponds less than 18 inches in depth are allowed within the front yard area but shall be setback a minimum of 10 feet from all property lines. In ground ponds of any depth are allowed within the rear or side yard areas but shall be setback a minimum of 1 ft from any property line.

18.56.060 Fireplaces, barbeques structures, statuary and fountains.

- A. Maximum Coverage: None
- B. Height: The maximum overall height for any free standing fireplace, built in barbeque, statuary or fountain is 12 ft. Height is measured vertically from the base to the highest point at top.
- C. Setback: Setback is measured from the farthest projecting point to any property line.
 - 1. Free standing fireplace, built in barbeque, statuary or fountains with a height of 8 ft. or less shall be setback a minimum of 3ft. from property line.
 - 2. Free standing fireplace, built in barbeque, statuary or fountains with a height greater than 8 ft. to a maximum of 12ft. shall be setback a minimum 5ft. from property line.
 - 3. Freestanding fireplace, built in barbeque, statuary or fountains with a height greater than 12ft. shall be constructed entirely within the building envelope.

18.56.070 Fences and walls

- A. The following development standards shall apply to all fences and walls within all zoning district:
 - 1. No fence or wall shall be constructed to exceed seven feet in height on any property line to the rear of the front setback line of any property, except that the section of fence above six feet shall be uniformly open to the passage of light and air, as determined by the Community Development Director. Exception to this standard may be allowed by Section 18.57.010 of the Exceptions Chapter or as approved by the Architectural Review Board.
 - 2. No fence or wall shall exceed three feet in height from the front setback line of any property to the street right-of-way line except as may be allowed by Section 18.57.010 of the Exceptions Chapter or as approved by the Architectural Review Board.

3. Any fence or wall along a property line adjacent to a street, or in the adjacent required setback, except in the clear triangle (see definition section), may include a gate, trellis or other entry feature exceeding the height limit stated in Section A 1 & 2 above. Such gate, trellis or entry feature shall be limited to ten feet in width and ten feet in height. Only one such gate, trellis or entry feature shall be permitted per street frontage.
4. Fence or wall height is measured from the bottom to the top of the fence or wall. Fences placed on top of a retaining wall do not include the height of retaining wall.
5. Corner Lots. Side setback area: Any fence over three feet in height shall be set back five feet on any side yard setback, which is adjacent to a street.
6. A clear triangle (see definition section for illustration) shall be required on corner lots in which nothing shall be erected, placed, planted or allowed to grow exceeding three feet in height. Such area shall consist of a triangular area bounded by the street right-of-way lines of such corner lots and a line joining points along said street lines twenty feet from the point of intersection.
7. Barbed wire, razor wire, and electric fences are prohibited in residential zoning districts unless otherwise approved by the Architectural and Site Review Board.
8. Chain link fences are prohibited in commercial zoning districts unless otherwise approved by the Architectural and Site Review Board.
9. Barbed wire, razor wire, chain link and electric fences are prohibited in industrial zoning districts within the front setback unless otherwise approved by the Architectural and Site Review Board.

18.56.080 Satellite dishes and solar equipment

Solar equipment and satellite dish antennas need not be screened, but must be located on the roof or wall in a rear or side setback area and must be as unobtrusive as possible.

RESOLUTION NO. 06

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF MORGAN HILL RECOMMENDING
APPROVAL OF A TEXT AMENDMENT ADDING,
SECTION 18.57 EXCEPTIONS TO CHAPTER 18 OF THE
MORGAN HILL MUNICIPAL CODE.**

WHEREAS, such request was considered by the Planning Commission at their regular meeting of October 10, 2006, at which time the Planning Commission recommended approval of application ZA-06-12: City of Morgan Hill – Exceptions and Modifications Zoning Text Amendments; and

WHEREAS, the insertion of Chapter 18.57, Exceptions to the Morgan Hill Municipal Code will consolidate exception provisions into one section for easier reference and the proposed text modifications will allow existing standards to be easier to interpret and apply; and,

WHEREAS, testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

**NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES
RESOLVE AS FOLLOWS:**

SECTION 1. The proposed zoning amendment is consistent with the Zoning Ordinance and the General Plan.

SECTION 2. The zone change is required in order to serve the public convenience, necessity and general welfare as provided in Section 18.62.050 of the Municipal Code.

SECTION 3. The Planning Commission hereby recommends the adoption of Chapter 18.57, Exceptions into the Morgan Hill Municipal Code to allow for easier application and reference. All text amendments are recommended to be made as shown in attached Exhibit A.

**PASSED AND ADOPTED THIS 10th DAY OF OCTOBER 2006, AT A REGULAR
MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:**

**AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:
ATTEST:**

APPROVED:

FRANCES O. SMITH, Deputy City Clerk

ROBERT J BENICH, Chair

CHAPTER 18.57

EXCEPTIONS

- 18.57.000 Purpose
- 18.57.010 Minor exceptions.
- 18.57.020 Exceptions to height limits.
- 18.57.030 Exceptions to required setbacks.
- 18.57.040 Exceptions to front yard setback requirements.

18.57.000 Purpose

The purpose of this chapter is to provide exceptions to standards found within Division I of this title.

18.57.010 Minor exceptions.

A. Authority. To ensure compatibility with surrounding uses and to preserve the public health, safety and welfare, the Community Development Director is authorized to grant a minor exception to the following code requirements:

1. Fence Height.

In any district the maximum height of any fence, wall or equivalent screening may be increased by two feet in height within the front setback and one foot in height to the rear of the front setback line of any property, where the topography of sloping sites or a difference in grade between adjoining sites warrants such increase in height to maintain a level of privacy, a level of security or to maintain effectiveness of screening, as generally provided by such fence, wall, hedge or screening in similar circumstances. The maximum height of any fence or wall may also be increased by a maximum of two feet in height within the front setback and one foot in height to the rear of the front setback line of any property when located adjacent to public parks, other public spaces or adjacent to private common area parks and open space and where such increase in height would not unreasonably affect desirable views or vistas or the open space value of abutting sites. (Ord. 1715 N.S. § 3, 2005)

In the OS, RE 10, RE 100,000, and RE 40,000 zoning districts, the maximum height of any fence located within the required front yard setback may be increased to a maximum six (6) feet in height. This exception shall only apply to open, wrought iron or decorative style fences that are at least seventy (70) percent open to the passage of light and air. Chain link, chain link with wood or vinyl slats, solid board fences, or any other type of view obstructing fencing shall not be permitted to exceed three feet in height in the required front yard setback.

2. Setbacks.

In any district, the Community Development Director may decrease the minimum setback by not more than twenty-five percent for front and rear yard areas and not by more than forty percent in side yard areas where the proposed setback area or yard is in character with the surrounding properties and is not required as an essential open space or recreational amenity to the use of the site, and where such decrease will not unreasonably affect abutting sites.

3. Lot Coverage.

In any district, the Community Development Director may increase the maximum lot coverage by not more than ten percent of the lot area, where such increase is necessary for significantly improved site planning or architectural design, creation or maintenance of views, or otherwise facilitate highly desirable features or amenities, and where such increase will not unreasonably affect abutting sites.

4. Off-site Parking.

The Community Development Director may authorize a maximum twenty-five percent of the required parking for a use to be located on a site not more than three hundred feet from the site of the use for which such parking is required, where such off-site parking will serve the use equally as effectively and conveniently as providing such parking on the same site as the use for which it is required.

5. On-site Parking.

The Community Development Director may authorize a maximum twenty-five percent reduction in the required on-site parking requirements where such reduction will not result in a traffic hazard or impact the necessary parking for the use.

6. Height.

- a. In any district the Community Development Director may authorize a ten percent increase in the maximum height limitation. Such increases may be approved where necessary to significantly improve the site plan or architectural design and where scenic views or solar access on surrounding properties are not affected.
- b. Height for Residential Planned Developments (RPD). In any RPD district where the existing height of a residential dwelling was not constructed according to the RPD building height standard, the Community Development Director may authorize building additions maintaining the existing nonconforming building height. Such additions may be approved where necessary to significantly improve the site plans or architectural design, and where scenic views or solar access for surrounding properties are not significantly affected. (Ord. 1763, N.S. § 3, 2006)

B. Application. An application for a minor exception shall be filed with the community development department, in a form prescribed by the Community Development Director.

C. Notification. The community development department shall notify the applicant and contiguous property owners and other interested parties of the proposed exception by mail ten days prior to the decision of the Community Development Director.

D. Conditions. The Community Development Director may impose reasonable conditions on an approval of a minor exception. Conditions may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls and screening, requirements for installation and maintenance of landscaping and erosion control measures, regulation of vehicular ingress and egress, and traffic circulation, regulation of signs, establishment of development schedules or time limits for performance or completion, requirements for periodic review by the community development department and any other conditions as deemed necessary by the Community Development Director. (Ord. 1763, N.S. § 3, 2006; Ord. 1715 N.S. § 3, 2005; Ord. 1554 N.S., 2002; Ord. 1421 N.S. § 1999; Ord. 1323 N.S. §§ 27 and 28, 1997; Ord. 1215 N.S. §§ 60 and 61, 1995; Ord. 1044 N.S. § 1, 1991)

18.57.020 Exceptions to height limits.

A. The following are exceptions to the height limitations set forth elsewhere in Division I of this title:

1. Farm buildings or structures on farms such as barns or silos are allowed to a maximum height of fifty feet, provided these are not less than fifty feet from every lot line.
2. Architectural features such as monuments, church spires, towers, cupolas, domes and chimneys, are allowed to a maximum height of fifty feet unless otherwise approved by the Architectural and Site Review Board.
3. Mechanical features such as smokestacks, vents, exhausts and elevator towers are allowed to a maximum height of fifty feet unless otherwise approved by the Architectural and Site Review Board.
4. Freestanding structures such as grain elevators and water tanks are allowed to a maximum height of fifty feet provided that all such structures above the heights otherwise permitted in the district shall not occupy more than twenty-five percent of the area of the lot and shall be set back a minimum of twenty-five feet from every lot line unless otherwise approved by the Community Development Director.
5. Radio towers, masts and aerials are allowed to a maximum height of fifty feet and shall be set back a minimum of twenty five feet from every lot line unless otherwise approved by the Community Development Director.
6. Flagpoles are allowed to a maximum height of fifty feet and shall be set back a minimum of ten feet from every lot line unless otherwise approved by the Community Development Director.
7. Parapet walls and roof screens may extend no more than six feet above the limiting height of a building.

8. Places of public assembly in churches, schools, and other permitted public and semipublic buildings shall have a maximum height of fifty feet, provided that for each one foot by which the height of such building exceeds the maximum height otherwise permitted in the district, its side and rear yards shall be increased in width or depth by an additional foot over the side and rear yards permitted in the district, unless otherwise approved by the Architectural and Site Review Board.

18.57.030 Exceptions to required setbacks.

A. The following are exceptions to the setback requirements set forth elsewhere in Division I of this title for structures within the required setback area:

1. Cornices, awnings, eaves, wing walls or other similar architectural features may project into the required setback a distance not to exceed three feet.
2. Canopies or similar architectural features within any non-residential zoning district are permitted within the required setback area provided that they do not project more than two-thirds the distance of the required setback from the property line or public right-of-way and in no case be setback less than five feet.
3. Porches, stairways and landings may project a distance not to exceed five feet and in no case be setback less than five feet.
4. Bay windows and chimneys may project into the required setback a distance not exceeding three feet, provided that such features do not occupy, in the aggregate, more than one-third of the length of the building wall on which they are located.
5. Equipment or structures enclosing such equipment which are attached to the main building or accessory structure (e.g., solar panels and water storage tanks, heating, and air conditioning equipment, or similar mechanical equipment), shall not encroach more than fifty percent into a rear or side yard area. The fifty percent encroachment limitation can be waived if all other applicable code requirements can be met and the encroachment would not adversely affect the adjoining property. The Community Development Director shall approve of any encroachment prior to the issuance of a permit.

18.57.040 Exceptions to front yard setback requirements.

The following exceptions and modifications shall apply in front yard requirements provided herein:

A. In any R district where the average depth of at least two existing front yards on lots within one hundred feet of the lot in question and within the same block are less than the least front yard depth prescribed elsewhere in Division I of this title, the required depth of the front yard on such lot shall be modified. In such case, the front yard shall not be less than the average depth of the existing front yards, or the average depth of existing front yards on the two lots immediately adjoining, or, in the case of a corner lot, the depth of the front yard on the lot immediately adjoining; provided, however, that the depth of a front yard on any lot shall be at least ten feet.

B. In any R district where the natural grade of a lot within the required front yard has an average slope, normal to the front lot line at every point along such line, of such a degree or percent of slope that it is not practicable to provide a driveway with a grade of fifteen percent or less to a private garage conforming to the requirements of Division I of this title, such garage may be located within such front yard, but not in any case closer than five feet to the street line. (Ord. 1215 N.S. § 55, 1995; Ord. 559 N.S. § A (part), 1981)

Chapter 18.56

EXCEPTIONS AND MODIFICATIONS

Sections:

- 18.56.010 Application of chapter provisions.
- 18.56.020 Accessory structures--Basic requirements.
- 18.56.030 Accessory structures--Side and rear yards.
- 18.56.040 Height limits.
- 18.56.050 Front yard requirements.
- 18.56.060 Projections into required yards.
- 18.56.070 Fences and hedges.
- 18.56.090 Home occupations.
- 18.56.100 Special residential care facilities.
- 18.56.110 Storage on vacant lots.
- 18.56.120 Storage of construction equipment prohibited in all districts except service commercial and industrial.
- 18.56.130 Storage in yards of residential use districts prohibited.
- 18.56.140 Restricting vehicle parking in front yard of residential use district.
- 18.56.150 Minor exceptions.
- 18.56.160 Outdoor storage. (Ord. 1215 N.S. § 58, 1995)

18.56.010 Application of chapter provisions.

The requirements and regulations specified elsewhere in Division I of this title shall be subject to the exceptions, modifications and interpretations set forth in this chapter. (Ord. 559 N.S. § A (part), 1981)

18.56.020 Accessory structures--Basic requirements.

Accessory structures shall meet the following requirements:

- A. Dwelling Use Restricted. Except for guest houses, accessory structures shall not be used for dwelling purposes.
- B. Lot Coverage. Accessory structures shall not exceed thirty percent of the area of the minimum required rear yard. (Ord. 559 N.S. § A (part), 1981)

18.56.030 Accessory structures--Side and rear yards.

The following exceptions and modifications shall apply to the side and rear yard requirements provided in this chapter:

- A. Yard Requirements. Accessory structures shall be located at least five feet from any structure on the same lot and at least five feet from any property line. This requirement is subject to the following limitations:
 - 1. If the accessory unit is attached to the main structure, it must be separated by a breezeway or similar passageway.

2. The accessory structure shall not exceed a maximum height of twelve feet as measured vertically from the average contact ground level at the front wall of the structure to the highest point of the coping of a flat roof, or mansard roof, or the highest point of a ridge for gable, hip or gambrel roofs.

3. Cumulatively, accessory structures in rear or side yards can occupy no more than thirty percent of the total required yard area.

B. Patios and Decks. Patios and decks constructed at grade may be located in the side and rear yards to within one foot of any property line. Patios and decks not more than thirty inches above grade may be located in the side and rear yards to within three feet of any property line. If more than thirty inches above the grade, the patio or deck must be setback five feet from the property line.

C. Patio Structures. Patio structures may encroach into required rear yards but shall not be located closer than five feet of the rear lot line and five feet of the side lot line.

D. Lath-covered Structures. Lath-covered structures for a principal residential structure may encroach to within three feet from the property line, provided that the lath cover is uniformly open.

E. Exception. A detached accessory structure must be located at least three feet from any interior side or rear property line in a residential district and shall be subject to the following conditions:

1. It shall be located at least five feet from any structure on the same lot;
2. It shall not exceed a maximum overall height of six feet;
3. It shall be limited to a maximum gross floor projected roof area of one hundred twenty square feet;
4. Fire-resistive materials shall be installed and necessary permits obtained in accord with the city's adopted Uniform Building Code.

F. Pools, Spas and Pool Equipment. Swimming pools shall be a minimum of four feet from any structure or property line. Spas shall be a minimum of three feet from any structure and four feet from any property line except that above ground pools and spas shall be a minimum of five feet from any property line. Pool equipment shall be setback a minimum of five feet from property lines. (Ord. 1323 N.S. § 25, 1997; Ord. 1215 N.S. § 54, 1995; Ord. 1135 N.S. § 66, 1993; Ord. 1055 N.S. § C (part), 1991; Ord. 718 N.S. § 1, 1985; Ord. 559 N.S. § A (part), 1981)

18.56.040 Height limits.

Height limitations set forth elsewhere in Division I of this title shall not apply to:

A. Barns, silos or other farm buildings or structures on farms, provided these are not less than fifty feet from every lot line; church spires, belfries, cupolas and domes, monuments, water towers, fire and hose towers, observation towers, distribution and transmission lines, towers and poles, windmills, chimneys, smokestacks, flagpoles, radio towers, masts, and aerials; parapet walls extending not more than four feet above the limiting height of the buildings; outdoor theater screens, provided such screens contain no advertising matter other than name of the theater, to a maximum height of fifty feet, unless otherwise approved by the architectural and site review board;

B. Places of public assembly in churches, schools, and other permitted public and semipublic buildings, provided that these are located on the first floor of such buildings, and provided further that for each one foot by which the height of such building exceeds the maximum height otherwise permitted in the district, its side and rear yards shall be increased in width or depth by an additional foot over the side and rear yards required for the highest building otherwise permitted in the district. Maximum height shall be fifty feet unless otherwise approved by the architectural and site review board;

C. Bulkheads, elevators, penthouses, water tanks, monitors and scenery lofts, provided no linear dimensions of any such structure exceed fifty percent of the corresponding street lot line frontage; or towers and monuments, fire towers, hose towers, cooling towers, grain elevators, provided, however, that all such structures above the heights otherwise permitted in the district shall not occupy more than twenty-five percent of the area of the lot and shall be set back not less than twenty-five feet, in all parts from every lot line, to a maximum height of fifty feet unless otherwise approved by the architectural and site review board. (Ord. 1495 N.S. § 23, 2001; Ord. 1111 N.S. § 27, 1992; Ord. 559 N.S. § A (part), 1981)

18.56.050 Front yard requirements.

The following exceptions and modifications shall apply in front yard requirements provided herein:

A. In any R district where the average depth of at least two existing front yards on lots within one hundred feet of the lot in question and within the same block are less than the least front yard depth prescribed elsewhere in Division I of this title, the required depth of the front yard on such lot shall be modified. In such case, the front yard shall not be less than the average depth of the existing front yards, or the average depth of existing front yards on the two lots immediately adjoining, or, in the case of a corner lot, the depth of the front yard on the lot immediately adjoining; provided, however, that the depth of a front yard on any lot shall be at least ten feet.

B. In any R district where the natural grade of a lot within the required front yard has an average slope, normal to the front lot line at every point along such line, of such a degree or percent of slope that it is not practicable to provide a driveway with a grade of fifteen percent or less to a private garage conforming to the requirements of Division I of this title, such garage may be located within such front yard, but not in any case closer than five feet to the street line. (Ord. 1215 N.S. § 55, 1995; Ord. 559 N.S. § A (part), 1981)

18.56.060 Projections into required yards.

Certain architectural features may project into required yards or courts, as follows:

A. Cornices, awnings, eaves or other similar architectural features may project a distance not to exceed three feet;

B. Porches, stairways and landings, when they serve as a required means of egress from any structure, may project a distance not to exceed five feet;

C. Bay windows, balconies and chimneys may project a distance not exceeding three feet, provided that such features do not occupy, in the aggregate, more than one-third of the length of the building wall on which they are located;

D. Equipment or structures enclosing such equipment which are attached to the main building or garage (e.g., solar panels and water storage tanks, heating, and air conditioning equipment, or similar mechanical equipment), shall not encroach more than fifty percent into a rear or side yard area. Structures enclosing such equipment shall be in harmony with the aesthetics of the adjacent surroundings. The fifty percent encroachment limitation can be waived if all other applicable code requirements can be met and the encroachment would not adversely affect the adjoining property. The community development director shall approve of any encroachment prior to the issuance of a permit;

E. Within any commercial zoning districts, canopies are permitted provided that they do not project more than two-thirds the distance of the required front yard or side yard, and a setback from the property line or public right-of-way is no less than five feet. (For additional design guide-lines, see Title 18.74, design review, and Section 18.74.495, canopies in commercial district, of this title.) (Ord. 1215 N.S. § 56, 1995; Ord. 1055 N.S. § C (part), 1991; Ord. 829 N.S. § 4, 1987; Ord. 567 N.S. § A, 1981; Ord. 559 N.S. § A (part), 1981)

18.56.070 Fences and hedges.

A. No fence or hedge shall be constructed or grown to exceed seven feet in height on any property line to the rear of the front setback line of any property, except that the section of fence above six feet shall be uniformly open to the passage of light and air, as determined by the community development director, nor to exceed three feet in height from the front setback line of any property to the street right-of-way line except as may be allowed by Section 18.56.150A.1 of this Chapter. (Ord. 1715 N.S. § 3, 2005)

B. A visibility clearance area shall be required on corner lots in which nothing shall be erected, placed, planted or allowed to grow exceeding three feet in height. Such area shall consist of a triangular area bounded by the street right-of-way lines of such corner lots and a line joining points along said street lines twenty feet from the point of intersection. (Ord. 1323 N.S. § 26, 1997; Ord. 1215 N.S. § 57, 1995; Ord. 980 N.S. § 3 (part), 1990; Ord. 559 N.S. § A (part), 1981)

C. Corner Lots. Side setback area: Any fence over three feet in height shall be set back five feet on any side yard setback, which is adjacent to a street. (Ord. 1715 N.S. § 3, 2005)

D. Prohibited Fences. Barbed wire, razor wire, and electric fences are prohibited from use on any parcel of property in the city that is used for residential purposes. (Ord. 1715 N.S. § 3, 2005)

18.56.090 Home occupations.

A. A zoning permit shall be required for all home occupations. Prior to issuance of any zoning permit for a home occupation, the following criteria shall be used by the community development department in evaluating the application:

1. The use is clearly incidental and secondary to the use of the dwelling for residential purposes;

2. That portion of the use conducted in the dwelling unit shall be carried on solely by the resident thereof;

3. All uses shall be conducted only in one room of the dwelling or garage. In no case shall the home occupation occupy more than one-fourth of the floor area on one floor of the building;

4. Materials used in home occupations shall be stored only in the room used for the home occupation, or in that area of the garage not required for parking;

5. The use shall not entail the use or storage of explosive, flammable or otherwise hazardous materials;

6. The mechanical or electrical equipment used in connection with the home occupation shall not require an electrical motor exceeding fifteen amperes at one hundred ten volts, or the equivalent thereof, and not be operated in such a manner as to disturb the peace, quiet and comfort of neighboring residents or any reasonable person of normal sensitivity residing in the area;

7. The appearance of the dwelling shall not be altered, nor shall the home occupation be conducted in such a manner that it may be reasonably recognized as serving a nonresidential use, either by color, materials, construction, lighting, signs, sounds or vibrations;

8. No signs or displays shall be used to identify the home occupation;

9. The use shall not attract more than ten vehicles per day.

B. A zoning permit issued for a home occupation is not transferable.

C. The following uses are expressly prohibited:

1. Repair or construction of motor vehicles and large appliances;

2. Massage parlors, dating services, photo schools and dance studios. (Ord. 1135 §§ 68, 69, 1993; Ord. 559 N.S. § A (part), 1981)

18.56.100 Special residential care facilities.

A. Special residential care facilities, as defined in Chapter 18.04 of this title, shall require zoning permit approval by the community development director. The director may require, as a reasonable condition to zoning permit approval, that the facility be located farther than three hundred feet from the nearest similar facility, up to a distance of one mile.

B. A zoning permit for special residential care facilities may be revoked at any time by the city council, following public hearing, provided that the council finds:

1. The facility is located within three hundred feet, measured from property boundary line to property boundary line, of another existing community care facility for wards of the juvenile court; and

2. The presence of the facility at its present location has resulted in the surrounding neighborhood having to sustain a disproportionate and unreasonable level of vandalism, violence, or other acts of disruption. (Ord. 559 N.S. § A (part), 1981)

18.56.110 Storage on vacant lots.

No person shall store any commercial or construction equipment or materials or store or park any boat, house trailer, camper trailer, detached camper-trailer top, motor vehicle or dismantled motor vehicle on vacant lots or vacant parcels in any zoning district of the city. (Ord. 899 N.S. § 24 (part), 1989)

18.56.120 Storage of construction equipment prohibited in all districts except service commercial and industrial.

No person shall store any commercial or construction equipment or materials on any occupied lot or parcel in any zoning district of the city except in the service commercial or industrial districts. Equipment or materials being used for construction on the premises where a valid building permit has been issued or applied for may be stored thereon during construction. (Ord. 899 N.S. § 24 (part), 1989)

18.56.130 Storage in yards of residential use districts prohibited.

A. Front Yard Storage Prohibited. No person shall store any boat, house trailer, camper, mobile home, trailer, detached camper-trailer top, dismantled vehicle or any other similar type vehicle in the front yard of any residential district, which shall include those portions of a PUD (Planned Unit Development) district devoted to residential uses.

B. Side and Rear Yard Storage Restricted. No person shall park or store any vehicle, boat or trailer in the side yard or rear yard area of a corner lot or reversed corner lot of any residential district and also those portions of a PUD district devoted to residential uses unless said vehicle, boat or trailer is screened from view from public rights-of-way and such vehicle, boat or trailer is setback at least as far as the required front yard setback on the adjacent interior lot. (Ord. 1215 N.S. § 59, 1995; Ord. 899 N.S. § 24 (part), 1989)

18.56.140 Restricting vehicle parking in front yard of residential use district.

No person shall park or store any automobile or other motor vehicle, including but not limited to motorcycles, in any front yard in any residential district or those portions of a PUD district devoted to residential uses. Parking shall be permitted in and upon an improved or paved driveway in said front yard area if each vehicle is currently licensed and operative. (Ord. 899 N.S. § 24 (part), 1989)

18.56.150 Minor exceptions.

A. Authority. To ensure compatibility with surrounding uses and to preserve the public health, safety and welfare, the community development director is authorized to grant a minor exception to the following code requirements:

1. Fence Height.

A. In any district the maximum height of any fence, wall, hedge or equivalent screening may be increased by two feet in height within the front setback and one foot in height to the rear of the front setback line of any property, where the topography of sloping sites or a difference in grade between adjoining sites warrants such increase in height to maintain a level of privacy, or to maintain effectiveness of screening, as generally provided by such fence, wall, hedge or screening in similar circumstances. The maximum height of any fence or wall may also be increased by a maximum of two feet in height within the front setback and one foot in height to the rear of the front setback line of any property when located adjacent to public parks, other public spaces or adjacent to private common area parks and open space and where such increase in height would not unreasonably affect desirable views or vistas or the open space value of abutting sites. (Ord. 1715 N.S. § 3, 2005)

B. In the OS, RE 10, RE 100,000, and RE 40,000 zoning districts, the maximum height of any fence located within the required front yard setback may be increased to a maximum six (6) feet in height. This exception shall only apply to open, wrought iron or decorative style fences that are at least seventy (70) percent open to the passage of light and air. Chain link, chain link with wood or vinyl slats, solid board fences, or any other type of view obstructing fencing shall not be permitted to exceed three feet in height in the required front yard setback.

2. Setbacks. In any district, the community development director may decrease the minimum setback by not more than twenty-five percent for front and rear yard areas and not by more than forty percent in side yard areas where the proposed setback area or yard is in character with the surrounding properties and is not required as an essential open space or recreational amenity to the use of the site, and where such decrease will not unreasonably affect abutting sites.

3. Lot Coverage. In any district, the community development director may increase the maximum lot coverage by not more than ten percent of the lot area, where such increase is necessary for significantly improved site planning or architectural design, creation or maintenance of views, or otherwise facilitate highly desirable features or amenities, and where such increase will not unreasonably affect abutting sites.

4. Off-site Parking. The community development director may authorize a maximum twenty-five percent of the required parking for a use to be located on a site not more than three hundred feet from the site of the use for which such parking is required, where such off-site parking will serve the use equally as effectively and conveniently as providing such parking on the same site as the use for which it is required.

5. On-site Parking. The community development director may authorize a maximum twenty-five percent reduction in the required on-site parking requirements where such reduction will not result in a traffic hazard or impact the necessary parking for the use.

6. Height. In any district the community development director may authorize a ten percent increase in the maximum height limitation. Such increases may be approved where necessary to significantly improve the site plan or architectural design, and where scenic views or solar access on surrounding properties are not affected.

7. Height for Residential Planned Developments (RPD). In any RPD district where the existing height of a residential dwelling was not constructed according to the RPD building height standard, the Community Development Director may authorize building additions maintaining the existing nonconforming building height. Such additions may be approved where necessary to significantly improve the site plans or architectural design, and where scenic views or solar access for surrounding properties are not significantly affected. (Ord. 1763, N.S. § 3, 2006)

B. Application. An application for a minor exception shall be filed with the community development department, in a form prescribed by the community development director.

C. Notification. The community development department shall notify the applicant and contiguous property owners and other interested parties of the proposed exception by mail ten days prior to the decision of the community development director.

D. Conditions. The community development director may impose reasonable conditions on an approval of a minor exception. Conditions may include, but shall not be limited to, requirements for special yards, open spaces, buffers, fences, walls and screening, requirements for installation and maintenance of landscaping and erosion control measures, regulation of vehicular ingress and egress, and traffic circulation, regulation of signs, establishment of development schedules or time limits for performance or completion, requirements for periodic review by the community development department and any other conditions as deemed necessary by the community development director. (Ord. 1763, N.S. § 3, 2006; Ord. 1715 N.S. § 3, 2005; Ord. 1554 N.S., 2002; Ord. 1421 N.S. § 1999; Ord. 1323 N.S. §§ 27 and 28, 1997; Ord. 1215 N.S. §§ 60 and 61, 1995; Ord. 1044 N.S. § 1, 1991)

18.56.160 Outdoor storage.

Outdoor Storage in Commercial and Industrial Areas. Outdoor storage buildings, containers and enclosures in commercial and industrial zoning districts are permitted only when screened from view of any public right-of-way, are less than three hundred square feet, and located in rear or side yard areas. Location of storage buildings, enclosures, containers, etc., shall not interfere with or remove existing required parking and shall not be used for any purpose other than storage. Location and screening of storage containers must be approved by the community development department prior to placement on any industrial or commercial property. (Ord. 1055 N.S. § C (part), 1991)